SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No.

JOHN A ANDREWS ET AL., DEFENDANTS, APPELLANTS,

vs.

OTTO THUM ET AL., COMPLAINANTS, APPELLEES.

TRANSCRIPT OF RECORD OF CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

Filed in Clerk's Office of United States Circuit Court of Appeals for the First Circuit, and Case Docketed March 9, 1895.

INDEX.

	Page.
Court, title of case, and appearance of counsel	1
Transcript of record of circuit court:	
Bill of complaint	2
Answer	6
Replication	10
EVIDENCE FOR COMPLAINANTS.	
Deposition of Walter P. Keene	13
Ellis Spear	15
Otto Thum	22
Benjamin D. Peterson	31
EVIDENCE FOR DEFENDANTS.	
Deposition of William P. Clough	41
Merrill S. Noyes	53
Charles H. Jenkins	61
Albert C. Smith	70
Joseph B. Sharland	76
Benjamin E. Corlew	82
John W. F. Wilison	86

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Page.

EVIDENCE FOR COMPLAINANTS IN REPLY.

Deposition of Henry B. Fairchild 101
Edwin P. Bryant 105
Charles E. Barker 106
Joseph E. Meigs 107
Charles F. Wood 108
Hiram H. Logan 109
William A. Dole 110
Edward J. Murphy 113
William Thum 119
Frank H. Woodworth 130
Hugh H. Osgood 131
W. Douglas Sevin 132
L. A. Gallup 133
Barzillai P. Bishop 134
George E. Stiles 137
Everett M. Durkee 138
Frederick Rogers 138
Frank M. Wilson 139
William R. Chaffee 142
Charles A. Rapelye 143
Edward C. Frisbie 144
Charles S. Williams 145

COMPLAINANTS' EXHIBITS.

Keene letter (put in evidence, page 15) 21
Assignment—Assignment, June 17, 1887, Otto Thum to William Thum (put in evidence, page 33) 33
Copy of Keene's affidavit (put in evidence, page 14) 35
Keene affidavit (put in evidence, page 33) 35
Spear affidavit No. 1 (put in evidence, page 33) 36
Spear affidavit No. 2 (put in evidence, page 33) 38
Andrews letter (put in evidence, page 33) 39
Andrews bill (put in evidence, page 33) 40
Thum patent No. 1—Letters patent No. 278,294, to Otto Thum, dated May 22, 1883, for improvement in fly-paper (put in evidence, page 32) 147
Patent Office copy of same 177
Thum patent No. 2—Letters patent No. 305,118, to Otto Thum, dated September 16, 1884, for manufacture of fly-paper (put in evidence, page 33) 148
Patent Office copy of same 181
Willson affidavit (put in evidence, page 95; retained by counsel) 149
Snell letter (put in evidence, page 123) 150
Irvin letter (put in evidence, page 123) 151
Noyes letter (put in evidence, page 123) 151
Smith letter (put in evidence, page 123) 152
McDowell letter No. 1 (put in evidence page 123) 152
McDowell letter No. 2 (put in evidence, page 123) 153
Leggett letter No. 1 (put in evidence, page 123) 153
Leggett letter No. 2 (put in evidence, page 123) 154
Letter, being letter dated May 5, 1890, National Fly Paper Company to O. and W. Thum (put in evidence, page 128) 154
Perkins letter (put in evidence, page 128) 155
Keene samples—Sample of Mammoth fly-paper (put in evidence, page 33).
Roller—Roller testified to by William Thum (put in evidence, page 124).

Page.

DEFENDANTS' EXHIBITS. Page.

101 Clough A—Fly-paper (first referred to on page 41).
105 Willson sketch (drawn on original deposition after cross-int. 40, page 93, of
106 this record).
107 File-wrapper, etc., Thum patent No. 278,294—Improvement in fly-paper
108 (put in evidence, page 98) 155
109 File-wrapper, etc., Thum patent No. 305,118—Manufacture of fly-paper (put
110 in evidence, page 98) 164
113
119
130 Court and title 185
131 Bill, answer, and replication 185, 186
132 Hearing in circuit court 186
133 Decree for injunction and account 186
134 Appearance of Fish, Richardson & Storrow for defendants 187
137 Motion to reopen 188
138 Motion to dissolve injunction 188
138 Letters patent No. 125,326, to Thaddeus E. Peck 189
139 Patent Office copy of same 190
142 Rescript and final decree 192
143 Acknowledgment of satisfaction of money payments decreed 192
144 Hearing and denial of motions to reopen and to dissolve injunction 193
145 Prayer for appeal and assignment of errors 193
Rescript allowing same 194
Protest against allowance of appeal 195
21 Certificate of clerk of circuit court 195
Opinion of the circuit court 196
33 Bond to party on appeal 198
35 Citation on appeal and allowance thereof 199
35 Order enlarging time for docketing case in United States circuit court of ap-
36 peals 201
38 Proceedings in United States circuit court of appeals for the first circuit:
39 Motion to dismiss appeal 201
40 Affidavit of Thomas J. Johnston 203
Otto and William Thum 207
147 Record on motion to dismiss appeal:
177 Extracts from transcript of record:
Answer 226
148 Deposition of John W. F. Willson 209
181 Complainants' Exhibit Willson Affidavit 220
149 Motion to reopen 221
150 Final decree 222
151 Denial of motion to reopen 222
151 Prayer for appeal and assignment of errors 223
152 Allowance of appeal 224
152 Protest of defendants against allowance of appeal by their solicitors,
153 Fish, Richardson & Storrow 224
153 Bond to party on appeal 224
154 Citation on appeal 226
Service of citation 226
154 Order enlarging time for docketing case 230
155 Copy of docket of circuit court of appeals 230
Copy from docket of circuit court 232

Page.
Opinion of circuit court of appeals on motion to dismiss appeal 233
Order of court, June 23, 1894, denying motion to dismiss appeal 235
Opinion of circuit court of appeals on the merits, February 21, 1895 235
Decree of February 21, 1895, on the merits 238
Petition for rehearing 239
Petition for leave to file affidavit on petition for rehearing 241
Affidavit of Ellis Spear, accompanying petition 241
Order of court, May 13, 1895, granting a rehearing as to certain matters 243
Opinion of the court, June 11, 1895, on rehearing 244
Final decree, June 11, 1895, on rehearing 244
Petition on form of mandate by Fish, Richardson & Storrow 245
Petition on form of mandate by Mr. Perkins 247
Petition on form of mandate by appellees 248
Certificate of clerk of circuit court of appeals 250

Page.
233
235
235
238
239
241
241
243
244
244
245
247
248
250

Circuit Court of the United States,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO THUM ET AL. *v.* JOHN A. ANDREWS ET AL.

BILL OF COMPLAINT.

[FILED JULY 27, 1891.]

To the Honorable the Judges of the Circuit Court of the United States in and for the District of Massachusetts:

Otto and William Thum, of the city of Grand Rapids, in the county of Kent and State of Michigan, citizens of the said State, bring this their bill against John A. Andrews, William Y. Wadleigh, B. F. Bullard, and William A. Dole, of the city of Boston, in the county of Suffolk, and State of Massachusetts, citizens of the said State, trading under the name and style of John A. Andrews & Co., at Nos. 5 and 7 Commercial Street, in the said city of Boston.

I. And thereupon your orators complain, and say that, heretofore, to wit, on or about the fourteenth day of June, in the year one thousand eight hundred and eighty-two, one Otto Thum, one of the complainants in this bill named, was the true, original and first inventor of a certain new and useful improvement in sticky fly-paper and machinery for the manufacture of the same, not known or used before, and not, for more than two years prior to his application for a patent therefor, in public use or on sale with his consent or allowance.

II. And your orators further show unto your Honors that the said Otto Thum, having made due application therefor, and in all and every respect complied with the statutes in such case made and

provided, did obtain Letters Patent of the United States for his said improvement for the term of seventeen years from the date of the issuance thereof; which said issue occurred upon the sixteenth day of September, 1884, the said Letters Patent being numbered 305,118, as by the said Letters Patent, or a duly authenticated copy thereof ready, here in court to be produced, will fully and at large appear.

III. And your orators further show unto your Honors that, on or about the twenty-seventh day of February, in the year one thousand eight hundred and eighty-three, the said Otto Thum was the true, original and first inventor of a second new and useful improvement in sticky fly-paper, which also was not known or used before, and not, for more than two years prior to his application for a patent therefor, in public use or on sale with his consent and allowance.

IV. And your orators further show that the said Otto Thum, having made due application therefor, and having in all and every respect complied with the statutes in such case made and provided, did obtain Letters Patent of the United States for his said improvement for the term of seventeen years from the date of the issuance thereof, which said issue occurred upon May 22, 1883, the said Letters Patent being numbered 278,294, as by the said last-named Letters Patent, or a duly authenticated copy thereof, ready here in court to be produced, will fully and at large appear.

V. And your orators further show that, on or about the seventeenth day of June, 1887, the said Otto Thum, for a good and valuable consideration, did assign, set over and transfer all of his right, title and interest in and to the said Letters Patent Nos. 278,294 and 305,118, to the full end of the term thereof, unto Otto and William Thum, the complainants in this bill named, which said assignment was recorded in the United States Patent Office, according to the law in such case made and provided, upon the twenty-second day of June, 1887, as by the said assignment, or a duly authenticated copy thereof, ready here in court to be produced, will fully and at large appear.

VI. And your orators further show that they are the sole owners of the said Letters Patent herein named, and all rights thereunder; and that they have caused the said improvements therein fully

described and set forth to be extensively applied to practical use; and have been, and but for the infringement by the respondents herein complained of, and by others, would still be, in the undisturbed possession, use and enjoyment of the exclusive privileges secured by the said Letters patents, and in receipt of the profits thereof.

VII. And your orators further show unto your Honors, as they are informed and verily believe, that the said respondents herein named, well knowing all the facts herein set forth, have made and used and sold, and are now making and using and selling, sticky fly-paper and machinery for the manufacture thereof, substantially the same in construction and operation as the herein named Letters Patent described and set forth, the exclusive right to which, to make and use and vend to others to be used, is by law vested in your orators.

VIII. And so it is, may it please your Honors, that the said respondents, as your orators are informed and believe, without the license of your orators, against their will, and in violation of their rights, have since the date of the before-named Letters Patents made, used and sold, and intend still to continue to make, use and sell, the said improvements within the said district of Massachusetts; the said patented improvements being capable of being embodied in one product and one process of manufacture, and being in fact so used; whereby the said respondents have been, and are now, in receipt of large sums of money as profits on their unlawful use of the said inventions; yet, though often requested, they have refused, and do still refuse, to pay unto your orators any of the profits they have made from such unlawful manufacture, use and sale, or to desist from further infringement of the said Letters Patents; all of which acts and doings are in violation of the exclusive rights and privileges so as aforesaid vested in your orators under, and by virtue of, the said Letters Patents and are contrary to equity and good conscience, and tend to the manifest injury of your orators in the premises.

IX. To the end, therefore, that the respondents may, if they can, show reason why your orators should not have the relief hereby prayed, and that they may make a full disclosure and discovery of

all the matters aforesaid, and upon their several corporal oaths and according to the best and utmost of their knowledge, remembrance, information and belief, true, perfect and direct answer make to the matters and things hereinbefore stated and charged, and particularly to such of the interrogatories hereinafter numbered and set forth, as by the note hereinunder written they are required to answer, that is to say: —

1. Whether the said original Letters Patent No. 278,294, were granted and issued to Otto Thum for improvements in sticky fly-paper, upon May 22, 1883, as aforesaid?

2. Whether the said original Letters Patent, No. 305,118, were granted and issued to Otto Thum for improvement in sticky fly-paper and machinery for the manufacture of the same, upon Sept. 16, 1884, as aforesaid?

3. Whether the said assignment of the herein-named Letters patents from Otto Thum to Otto and William Thum, was made upon the seventeenth day of June, 1887, and recorded in the United States Patent Office upon the twenty-second day of June, 1887, as aforesaid?

4. Whether the said respondents, or either and which of them, have or has at any time, and when and during what period of time, made, used or sold any, and how much, sticky fly-paper made in whole or in part on the principles, or by the machinery described in the said Letters Patents Nos. 278,294 and 305,118, and how and in what manner, minutely and in detail, was any such sticky fly-paper made or used, and by what form of machinery was it or any of it manufactured?

X. And that the said respondents may answer the premises, and that they may be decreed to account for and pay over the profits thus unlawfully derived, or which might have been derived, from the violation of the rights of your orators as aforesaid, your orators pray that your Honors, upon entering a decree in favor of your orators against the said respondents for infringement, as above prayed for, may also assess or caused to be assessed under your directions as well as the profits or income derived therefrom, to be accounted for as aforesaid, as also in addition thereto the damages sustained by your orators by reason of such infringement, and that

your Honors may increase the actual damages so assessed to a sum equal to three times the amount of the assessment, in accordance with the statute in such case made and provided, under the circumstances of this wilful and unjust infringement committed by said respondents, as hereinbefore set forth; and further that the said respondents may be restrained from all or any further violation of the rights of your orators as aforesaid, your orators pray that your Honors may grant a writ of injunction issuing from and under the seal of this Honorable Court, or issued by one of your Honors [both]* perpetually [and *pendente lite*]* enjoining and restraining the said respondents and their, or any of their, clerks, attorneys, factors, agents, salesmen, servants or workmen from any further manufacture or use or sale in any manner of the said patented improvements, or any part thereof, the exclusive benefit of which is secured to your orators by the said recited Letters Patents, pending in this cause, and they pray for such other and further relief as the equity of the case may require, and as to your Honors may seem meet.

XI. May it please your Honors to grant unto your orators not only a writ of injunction in conformity to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to the said respondents, John A. Andrews, William Y. Wadleigh, B. F. Bullard and William A. Dole, trading under the name and style of John A. Andrews & Co., commanding them, on a day certain therein to be named, to appear and answer to this bill of complaint, and to abide and perform such order and decree in the premises as to the Court shall seem meet, and as in equity and good conscience may be required.

OTTO THUM.
WILLIAM THUM.

THOMAS J. JOHNSTON,
Solicitor for Complainants, and of Counsel.

NOTE. The respondents are required to answer each of the interrogatories numbered 1 to 4, inclusive.

*Words in brackets inserted by amendments filed Aug. 17, 1891.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

Before me, the subscriber, duly authorized to administer oaths, personally came Otto Thum and William Thum, the complainants in the foregoing bill named; who, being duly sworn, depose and say that, so far as the statements therein made are within their own knowledge, they are true, and so far as they are derived from information and belief, that they verily believe them to be true; and that they verily believe the said Otto Thum to be the true, original and first inventor of the said several improvements in sticky fly-paper and machinery for the manufacture thereof, described in the various Letters Patents mentioned in said bill; and further, that the title to the said Letters Patents remains solely in them.

OTTO THUM.
WILLIAM THUM.

Sworn and subscribed before me at the city of Grand Rapids, in the county of Kent, and State of Michigan, this twenty-first day of July, 1891.

[SEAL] CORNELIUS J. DEYOUNG,
Deputy Clerk of the Circuit Court,
Kent County, Michigan.

ANSWER.

[FILED SEPT. 14, 1891.]

These defendants, now and at all times hereafter saving and reserving unto themselves all and all manner of benefit and advantage of exception that can or may be taken to the many errors, uncertainties, and insufficiencies in the said bill of complaint contained, for answer thereto, or unto so much thereof as they are advised it is material or necessary for them to make answer unto, answering, say: —

1. These defendants deny that the said Otto Thum, one of the complainants in this bill, was or is the true, original and first

inventor of a certain new and useful improvement in sticky fly-paper and machinery for the manufacture of the same, such as is described in said bill of complaint and in the two patents there named and referred to.

2. And these defendants, further answering, do not admit that Letters Patent of the United States, numbered 305,118, and dated Sept. 16, 1884, were granted to one Otto Thum, for an alleged new and useful improvement in sticky fly-paper; and whether or not said Letters Patent were duly applied for or lawfully granted as stated in said bill, these defendants do not know and are not informed save by said bill, of the truth of said statements; and they, therefore, deny the same, and leave the complainants to make such proof thereof as they may be advised.

3. And these defendants, further answering, deny that the said Otto Thum, one of the complainants of this bill, was, on or about the twenty-seventh day of February, 1883, the true, original and first inventor of a second new and useful improvement in sticky fly-paper; and that said alleged second invention as well as said alleged first invention, before referred to in said bill of complaint, were well known and used in public, and in public use more than two years prior to either of the two applications for a patent named in said bill of complaint.

4. And these defendants, further answering, do not know, and therefore deny that said Otto Thum made due application, and in all and every respect complied with the statutes in such case made and provided, and did obtain in Letters Patent of the United States on May 22, 1883, and numbered 278,294, as set forth in said bill of complaint, and leave the complainants to make such proof as they may be advised.

5. And these defendants, further answering, say that they do not know and are not informed, save by the bill, whether the assignment mentioned therein was made or recorded as alleged, and, therefore, they deny the same, and leave the complainants to make such proof as they may be advised.

6. And these defendants, further answering, say, on information and belief, that long before the alleged invention of said Otto Thum of the alleged improvement in sticky fly-paper as set forth in this

bill of complaint, that the same was known to be in public use by Merrill S. Noyes, now residing in Boston, Mass., about the years 1878 and 1879, and in subsequent years, in Hartford, Conn., in Norwich, Conn., and in various other places in Connecticut and in Massachusetts.

7. These defendants, further answering, say, on information and belief, that William P. Clough, now residing in Everett, in the State of Massachusetts, was engaged in the years 1878 and 1879 in business with John W. F. Willson, of Boston, Mass., in the manufacture and sale of sticky fly-paper, substantially like that described in the two alleged patents claimed to have been granted to Otto Thum in this bill of complaint, and that said William P. Clough made the stamp for putting the border or beaded edge the same as described in Thum's patent, and that said Clough and Willson made, sold and used said sticky fly-paper for three years subsequent to 1878.

8. And these defendants further answering, say, on information and belief, that John W. F. Willson is the first, original and true inventor of the so-called sticky fly-paper as described in this bill of complaint, and that said J. W. F. Willson first commenced the manufacture and sale of said sticky fly-paper as long ago as the year 1845, and has continued to manufacture the same up to the present time.

9. And these defendants, further answering, say that this alleged invention of sticky fly-paper was not patentable under the laws of the United States, and that no valid patent could be granted therefor, and that substantially the same process and mode of manufacture of said sticky fly-paper by said Thum has been carried on and practiced for a great many years in the manufacture of adhesive plasters, and is described on page 520 of Mohr and Redwood's Practical Pharmacy, edited by William Proctor, Jr., and published by Blanchard & Lea, at Philadelphia, in the year 1849, and is also described in many other medical books in the preparation of adhesive plasters, as is well known to all the medical profession.

10. And these defendants, further answering, say, on information and belief, that they have not made, used or sold any sticky fly-paper described and claimed in any valid patent granted by the United States to Otto Thum or to any other person, but have only

sold the sticky fly-paper such as has been made and used by John W. F. Willson, of Boston, during the past forty years and over.

11. And these defendants pray the same benefit of the facts and things herein set forth as if for reason therefor they had demurred to the said bill when a demurrer would have been proper, and the same benefit thereof as if they had specially pleaded to said bill when a special plea would have been proper.

12. Therefore these defendants deny the equity of said complainants' bill, and that the complainants are entitled to the relief in said bill prayed, or any part thereof; without this, that any other matter, cause or thing in said bill contained, material or necessary for the defendants to make answer unto, and not hereinbefore sufficiently answered, confessed, traversed, denied or avoided, is true, to the knowledge or belief of these defendants.

Wherefore these defendants pray that they may be hence dismissed with their costs and charges in their behalf most wrongfully sustained.

JOHN A. ANDREWS.
WILLIAM Y. WADLEIGH.
B. F. BULLARD.
WILLIAM A. DOLE.

STATE OF MASSACHUSETTS,
COUNTY OF SUFFOLK, ss.

On the fourteenth day of September, A. D., 1891, before me personally appeared William Y. Wadleigh, and made oath that he has read the foregoing answer, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein admitted or stated to be based on information and belief, and as to those matters he believes it to be true.

[SEAL] FRANK G. NESBITT,
Notary Public.

REPLICATION.

[Filed Nov. 3, 1891.]

These repliants, saving and reserving to themselves all and all manner of benefit of exception to the manifold insufficiencies and imperfections in the answer of the said respondents contained, yet for replication thereto do reply that they stand ready to make good their averments in their said bill of complaint contained; that the same are true and sufficient in law to be answered unto, and that the said answer of the said respondents is untrue and insufficient in law to be replied unto, without this: that any other matter or thing in the said answer contained and not hereby well and sufficiently replied unto, confessed and avoided, traversed, or denied, is true to the best of their knowledge and belief, and this they are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

OTTO and WILLIAM THUM,
by T. J. Johnston, *Solicitor.*

EVIDENCE FOR COMPLAINANTS.

Registered Letter No. 39, Post-office, Washington, D. C.

Received Jan. 2, 1892, of T. J. Johnston, a letter addressed to Jno. A. Andrews & Co., Boston, Mass.

Station C. Henry Sherwood, P. M., per D. Lan.

Registered Letter No. 40, Post-office, Washington, D. C.

Received Jan. 2, 1892, of T. J. Johnston, a letter addressed to J. McC. Perkins, Boston, Mass.

Station C. Henry Sherwood, P. M., per D. Lan.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO AND WILLIAM THUM, *Complainants*, *v.* JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. BULLARD AND WILLIAM A. DOLE, *trading under the name and style of* JOHN A. ANDREWS & CO., *Respondents*.

CITY OF WASHINGTON,
DISTRICT OF COLUMBIA, ss.

Personally appeared before me, a notary public in and for the aforesaid city and district, Thomas J. Johnston, who, being duly sworn, deposes and says that upon the second day of January, 1892, he enclosed in separate envelopes, copies of the annexed notice; and that thereupon he did address one of the said envelopes as follows:—

J. McC. PERKINS,
25 *Union Street*, *Boston*, *Mass.*,

and did address the other envelope as follows:—

JOHN A. ANDREWS & CO.,
5 & 7 *Commercial Street*, *Boston*, *Mass.*,

and that thereupon he did deposit the same in the registered mail of the United States, having first paid the postage thereon.

THOMAS J. JOHNSTON.

Sworn and subscribed before me, this eleventh day of January, 1892.

[SEAL]

HENRY E. COOPER,
Notary Public.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS,

IN EQUITY.

No. 2893.

OTTO AND WILLIAM THUM, *Complainants*, *v.* JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. BULLARD AND WILLIAM A. DOLE, *trading under the name and style of* JOHN A. ANDREWS & CO., *Respondents*.

You will please take notice, that upon Tuesday, the twelfth day of January, 1892, beginning at ten o'clock in the forenoon, at my office in the Equitable Building, 1003 F Street, Washington, D. C., I shall proceed to take the testimony of Ellis Spear, Esq., and of Walter P. Keene, Esq., witnesses produced on the part of complainants.

Such testimony will be taken before Henry E. Cooper, Esq., a notary public, or some other competent officer; and will be written down pursuant to sections 863 and 864 of the Revised Statutes of the United States, and to the sixty-seventh Equity Rule as amended; inasmuch as the said Ellis Spear, Esq., and the said Walter P. Keene and others, live at a greater distance from the place of trial than one hundred miles.

You are invited to attend and cross-examine.

T. J. JOHNSTON,
Complainants' Solicitor.

WASHINGTON, D. C., JAN. 2, 1892.

To J. McC. PERKINS,
25 *Union Street*, *Boston*, *Mass.*,
Respondents' Solicitor.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO AND WILLIAM THUM, *Complainants*,

v.

JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. BULLARD AND WILLIAM A. DOLE, *trading under the name and style of* JOHN A. ANDREWS & CO., *Respondents*.

Depositions taken *de bene esse*, pursuant to annexed notice before me, Henry E. Cooper, a notary public in and for the District of Columbia, at the office of Thomas J. Johnston, Esq., counsel for plaintiffs, 1003 F Street, Washington, D. C., upon Tuesday, the twelfth day of January, 1892, at ten o'clock in the forenoon. Walter P. Keene, a witness, produced on the part of complainants, being duly sworn, in answer to questions propounded by Mr. Johnston, deposes as follows: —

It is noted that appearance for complainants is made by Mr. Johnston, and that no counsel appear for the respondents, although the hour is now 10.30 o'clock.

DEPOSITION OF WALTER P. KEENE.

Int. 1. State your age, name, and occupation, and residence.

Ans. Walter P. Keene; aged twenty-one; law student; 1004 O Street, Washington, D. C.

Int. 2. Are you acquainted with the parties to this suit?

Ans. No.

Int. 3. Did you at any time, and, if so, when, purchase from the respondents any sticky fly-paper?

Ans. Yes, but I don't remember the date.

Int. 4. Please fix the time as nearly as you can.

Ans. It was either the latter part of August or the first part of September, 1891.

Int. 5. Are you the same Walter P. Keene who has already filed an affidavit in this cause, to be used upon a motion for preliminary injunction?

Ans. I am.

Int. 6. I show you a copy of said affidavit and ask you to refresh your memory by said copy, and testify to the facts as you remember them after having examined this copy.

Ans. I remember well all the incidents set down in the affidavit, and can state positively that they did occur.

[*Counsel for complainants gives notice that upon trial of the cause he will read in evidence the affidavit referred to by witness; and for purposes of verification offers in evidence the copy thereof which witness has examined, which is herewith returned, marked "Complainants' Exhibit Copy of Keene's Affidavit".*]

Int. 7. I show you a letter dated Sept. 4, 1891, and signed Walter P. Keene, and ask you if that letter was written by you? Please state in your answer at what time and under what circumstances this took place if so written.

Ans. The letter was written by myself; it was written on the date above mentioned, in answer to a letter from Thomas J. Johnston, Esq.

Int. 8. Please examine this letter, and after refreshing your memory therewith state upon the record the date upon which you purchased the sticky fly-paper from the respondents as stated in your answer to Int. 3, and refer to the circumstances attending such purchase as you now remember them.

Ans. Previous to the receipt of letter from Mr. Johnston, I visited respondents' place of business in Boston, and had examined sample of their sticky fly-paper, but was unable to get samples for myself; on the 19th of August, I returned from a short cruise and found a letter from Gen. Ellis Spear, requesting me to purchase some of respondents' sticky fly-paper; I immediately ordered a package and requested them to give me their rates; on the twenty-first, I received a letter from respondents giving their rates and stating that they had shipped me a carton of their Mammoth sticky fly-paper; owing to my absence from the city I did not receive it until the fourth day of September, 1891; during this latter absence Mr.

Johnston's letter came to my office and was answered on the fourth day of September, immediately upon the receipt of the above-mentioned carton of paper, with a bill for the same.

[*Counsel for complainants offers in evidence the letter referred to by witness, which is herewith returned, marked "Complainants' Exhibit Keene Letter".*]

Int. 9. Please state what you did with the letter and bill received by you from respondents, and referred to in complainants' Exhibit Keene Letter.

Ans. I enclosed them in the letter written to Mr. Johnston on the fourth day of September.

Int. 10. When did you next see them and what did you do with them when you did see them?

Ans. I next saw them in the clerk's office at Boston, and at the same time filed my affidavit and samples taken from the carton of respondents' Mammoth sticky fly paper, marked "Complainants' Exhibit Keene Samples".

Int. 11. Did you make any change in the fly-paper samples filed by you, marked as above, between the time of removing them from the package in which they were received by you and the time of filing them in the Clerk's office of this court?

Ans. I did not.

Int. 12. Are you related in any way to any of the parties to this suit or interested in the event of the cause.

Ans. I am not.

WALTER P. KEENE.

Sworn and subscribed before me this twelfth day of January, A. D. 1892.

[SEAL] HENRY E. COOPER,
Notary Public.

DEPOSITION OF ELLIS SPEAR.

Ellis Spear, an expert witness produced upon the part of complainants, being duly sworn, in answer to questions propounded by Mr. Johnston, deposes, as follows: —

Int. 1. State your name, age, residence, and occupation.

Ans. Ellis Spear; fifty-seven years; Washington, D. C.; attorney and solicitor of patents, and expert.

Int. 2. What has been your experience in the practice of your profession in mechanical matters, and in the explanation and construction of Letters Patent? Please state in your answer whether you have before testified in the suit or contest concerning this branch of the law.

Ans. I was for about thirteen years in the United States Patent Office, first in the examining corps in railway and civil engineering, and afterwards on the Board of Examiners-in-Chief, and assistant commissioner, and finally Commissioner of Patents. Since 1878 I have been, in the practice of my profession, for the greater part preparing and prosecuting applications for patents for inventions, and I have frequently testified as expert in suits for infringements of patents in the United States Courts. During my service in the Patent Office I was constantly examining applications for patents, or patents previously granted, and I have had occasion almost constantly to examine various kinds of machinery and manufactures, and consult with machinists and manufacturers.

Int. 3. Are you the same Ellis Spear who has already made affidavits in this cause for use upon the motion for preliminary injunction?

Ans. I am.

[*Counsel for complainants gives notice that upon trial of the cause he will refer to the affidavits named in the last question and answer.*]

Int. 4. I hand you herewith Letter Patents Nos. 278,294, granted to Otto Thum, on May 22, 1885, and 305,118, granted to Otto Thum, Sept. 16, 1884, and ask you if you are acquainted with the contents of and understand the said Letters Patent?

Ans. I have examined the Letters Patent and understand them. I have also examined the machinery used in the manufacture of this paper, and observed its operation, and am familiar with the use of the sticky fly-paper.

[*Counsel for complainants states that, inasmuch as the originals of the said Letters Patent are already on file in the clerk's office of this Court, he offers them in evidence without making them a part of this return, examination being made upon printed Patent Office copies,*

which are hereby offered in evidence, and marked "Complainants' Exhibits Copies of Patents A and B".

Int. 5. What are the elements and their combinations set out and described in the specifications and claims of the said Letters Patents, referring in No. 305,118 to Claim 3 only, and having reference to the invention disclosed in each of them? Please state in your answer your reasons for any opinion you may express.

Ans. I find that the invention in patent 305,118 relates to the manufacture of sticky fly-paper. This is a paper so known in the trade, the surface of which paper is smeared with an adhesive substance or compound very soft and sticky, and adapted, when touched by flies or other insects, to entrap them by its adhesive nature. That part of the patent not included in the third claim relates to mechanism adapted to be used in the manufacture of such paper. In this machine the sheets of sticky fly-paper are formed in a continuous web, in which web regularly recurring and equal spaces on one surface are smeared with the sticky substance, with intervening equal spaces between the smeared surfaces left without the adhesive substance. The nature of the sticky substance used upon this kind of paper is such that, when the sticky surface is left exposed, it cannot be conveniently handled or be conveniently packed for the trade. I find in this patent a construction and arrangement of the sub-divisions or sheets designed to facilitate the handling and packing of this sticky fly-paper for transportation and storage; this construction and arrangement consists in placing two of the equal sheets, one upon the other, with the smeared surfaces, called the "coated spaces", in contact. This arrangement I find described as producing an article consisting of a double sheet, in which the smeared surfaces are concealed and protected. The smeared spaces being regular in intervals and shape, and the sheets being accurately placed one upon the other, the entire smeared surface of each is thus protected and only the unsmeared backs of the sheets are exposed. As the adhesive substance is soft, the sheets may be pulled apart when they are desired for use. Before they are thus separated they may be handled and packed without contact or exposure of the smeared surfaces. I find in the claim No. 3 the article which I have

just above described specified in the terms of the claim, namely, sheets of sticky fly-paper made with corresponding adhesive faces placed together or with the adhesive faces in contact. I find in patent 278,294 an improved sheet of sticky fly paper of the general form and character heretofore described by me in the testimony which I have given above relating to patent 305,118. The particular improvement described in patent 278,294 is designed to obviate an objection sometimes occurring in the handling and storage of this fly-paper in which the smeared surfaces are placed in contact with each other. When the adhesive substance between the two sheets is subjected to heat, as of warm weather, or to heat above ordinary atmospheric temperature, it softens and flows over the unsmeared margins of the sheets, or exudes from between the sheets.

This tendency to spread over the margins is increased when the sheets are packed for transportation or storage, the pressure arising from the weight of the mass or from the packing tending to force the sticky substance outward towards or over the margins. Such outward movement of the sticky substance smears the margins and edges of the paper, rendering it unfit for use. The improvement in the patent, designed to remedy this defect, consists in forming a dam on the surface of the paper around the adhesive coating or that portion of the surface covered by the adhesive substance, the dam being placed upon the unsmeared margin of the paper. In order that the soft substance which is smeared upon the paper to catch the insects may not flow over this dam when one sheet is pressed upon the other, the dam is made of such material that it will adhere slightly to the face of a sheet applied to it but not so strongly that the sheets may not be readily separated. The adherence of the dam to the opposing sheet prevents the outward flow of the soft and sticky substance, which is thus included on all sides, being entirely surrounded by the dam. At the same time the dam itself, while it is formed of a substance somewhat adhesive, is of such a nature that it will not spread but maintains its form. By this the uncoated margin is protected and the sticky material is prevented from exuding in any direction.

The article I find specified in the claim consists of a sheet of fly-paper partially covered with sticky composition which I understand

to be that shown at B in the drawing, adapted to catch insects, this composition being surrounded by a band or margin, which I have called a dam, and which is illustrated at *a* in the drawing, the said dam being composed of slightly adhesive material of less adhesive nature, and therefore of more stability than the included material which serves to catch the insects.

Int. 6. Have you examined the products of the complainants and of the respondents, respectively? If you have, please state what resemblances, if any such there are, you find between them, and also compare these products with the invention set out in the Letters Patent in suit.

Ans. I am familiar with the sticky fly-paper manufactured by the complainants in accordance with the Letters Patent in suit and I have heretofore examined complainants' Exhibit Keene Samples. The Exhibit Keene Samples are in all respects the same as the sticky fly-paper manufactured by the complainants under the Letters Patent in suit, excepting that the exhibits were of somewhat larger size. I found the Keene Exhibit to be identically the same article as that described and claimed in complainants' Letters Patent 278,294 and to include the arrangement of the sheets described in complainants' Letters Patent 305,118 and specified in the third claim of said patent.

[*Adjourned to* 9.30 A. M., *January* 13, 1892, *at same place.*]

WASHINGTON, D. C., Jan. 13, 1892.

Commission met pursuant to adjournment. It is noted that there is still no appearance on the part of the respondents and there being no furthur direct examination of the witness, Ellis Spear, and no one present to cross examine, his signature is affixed at this point.

ELLIS SPEAR.

Sworn and subscribed this thirteenth day of January, A. D. 1892.

[SEAL] HENRY E. COOPER,
Notary Public.

Counsel for complainants states upon the record that, inasmuch as respondents' counsel has had ten days' notice of this commission, a

copy of which notice he produced in open court before his Honor, Judge Thomas L. Nelson, at the hearing upon a motion for a preliminary injunction made in behalf of the complainants upon Jan. 9. 1892, and inasmuch as at that time he was advised by the Court that he must attend this commission upon such notice, and yet nevertheless did not attend the same, counsel, therefore, here states that the witnesses, Walter P. Keene and Ellis Spear, are here now attending ready for cross examination. And inasmuch as said cross examination is waived by the non-appearance for respondents, counsel for complainants gives notice that he will decline to produce the said witnesses for cross examination at any other time or place than the present, after the adjournment of this commission. Adjourned subject to new notice.

CITY OF WASHINGTON,
DISTRICT OF COLUMBIA, ss.

I, Henry E. Cooper, a Notary Public in and for the district aforesaid, do hereby certify that the reasons for taking the foregoing depositions are and the facts are that the testimony of each of the witnesses, Walter P. Keene and Ellis Spear, is material and necessary in the cause in the caption of said depositions named, and that each of said witnesses lives at a greater distance from the place of trial of said cause than one hundred miles, to wit, Washington, D. C.

I further certify that the said depositions were duly written down by me pursuant to the provisions of sections 863 and 864 of the Revised Statutes of the United States and the sixty-seventh Equity Rule as amended, and also pursuant to the notice hereto annexed, which said notice, it has been satisfactorily made to appear before me, was duly and personally served upon the solicitor for the respondents in said cause on the second day of January, 1892, as per affidavit of said service herewith returned.

I further certify that, on the twelfth day of January, 1892, and upon the day following, I was attended by Thomas J. Johnston, Esq., solicitor for complainants, no counsel appearing for respondents; witnesses Walter P. Keene, Esq., and Ellis Spear, Esq., each of whom was of sound mind and lawful age, and each of said witnesses was by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and carefully examined, and the testimony of each of said witnesses was reduced to writing in his presence, and after carefully reading his said testimony to each of said deponents, respectively, each, respectively, subscribed the same in my presence.

And I further certify that all the exhibits referred to in said testimony and depositions, or offered in evidence herein before me, have

been by me duly marked as such, and that I have duly signed same up on the exhibits themselves.

And I do further certify that I am not of counsel nor attorney for either of the parties in said cause, and in the said depositions and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this thirteenth day of January, A. D. 1892.

[SEAL] HENRY E. COOPER, *Notary Public.*

[MEMORANDUM. Complainants' Exhibits, copies of patents "A" and "B" are here annexed, "A" being a Patent Office copy of U. S. Letters Patent, No. 278,294, granted Otto Thum, May 22, 1883, for fly-paper, and "B" being a Patent Office copy of U. S. Letters Patent, No. 305,118, granted Otto Thum, Sept. 16, 1884, for manufacture of fly-paper. This printed record contains Patent Office copies of these patents.

Complainants' Exhibit Copy of Keene's Affidavit is also here annexed. The original affidavit, of which this is a copy, is contained in this printed record under the title, "Exhibit Keene Affidavit, J. G. S., Ex'r". JOHN G. STETSON, *Clerk.*]

COMPLAINANTS' EXHIBIT KEENE LETTER, H. E. C., N. P.

GEN. ELLIS SPEAR,
Late Commissioner of Patents.

CHARLES H. WELCH,
Commissioner for Maine and Vermont.

SPEAR & WELCH,

Solicitors of Patents. Attorneys in Patent Causes.

Bergengren Block, Lynn, Mass.,
Rooms 21 and 22.

Washington, D. C., Office,
1003 F St., N. W.

LYNN, Sept. 4, 1891.

DEAR JOHNSTON, — Yesterday I arrived in Lynn after a short time spent "down east" and found your letter of the 31st waiting, but not the package of Mammoth fly-paper I had ordered.

On the 19th I returned from a short cruise and found Gen'l's letter, and immediately ordered a package to be sent to me here.

On the 21st I received the letter (which I enclose) giving the rates, and while I was at dinner the package came but the man who saw it did not know which company it came by.

The next day I tried to find it in all the regular lines but could not.

That night I left on the steamer and Welch said he would see about it.

Yesterday I found from one of the regular Co.'s who had looked the matter up that a small local company had brought it out from Boston and a notice brought it here again this morning.

The bill I also enclose but will retain the "carton" until I hear from you.

Will be glad to see you when you come east. Expect to see Will Knight next Thursday in Boston.

Give my regards to Mr. & Miss Cooper.

Yours truly,

WALTER P. KEENE.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO THUM ET AL. *v.* JOHN A. ANDREWS ET AL.

EVIDENCE FOR COMPLAINANTS.

TAKEN PURSUANT TO THE SIXTY-SEVENTH RULE OF THE SUPREME COURT OF THE UNITED STATES, IN EQUITY, AS AMENDED, BEFORE ME,

JOHN G. STETSON, *Examiner.*

BOSTON, Feb. 4, 1892.

Present: THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants;*
EDWARD B. CALLENDER, Esq., *of Counsel for Defendants.*

DEPOSITION OF OTTO THUM.

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 2. State your name, age, residence and occupation.

Ans. Otto Thum; twenty-seven; Grand Rapids, Mich.; manufacturer of sticky fly-paper.

Int. 2. Are you the same Otto Thum to whom has been granted

Letters Patent of the United States No. 278,294, May 22, 1883, and No. 305,118, Sept. 16, 1884?

Ans. I am.

Int. 3. Please state what led you to make the inventions set out in the Letters Patent above named in suit. And mention in your answer what difficulties, if any there were, which you encountered in making a commercial success of the improvements covered thereby.

[*Counsel for the defendants objects to the last part of the interrogatory as irrelevant and immaterial.*]

Ans. In the beginning of the year 1882, I was at work on machinery for making sticky fly-paper similar to that which we now make, known in the market as "Tanglefoot" but minus the sealing border. Each sheet of fly-paper was to be composed of two separate sheets of paper placed face to face with the sticky material between them. On this construction of the fly-paper and also part of the machinery, we applied for a patent, believing that it would be quite a convenience to the consumer to have a five-cent sheet of fly-paper in two parts one part to be used at a time or both parts in different places. It was also quite a saving in machinery to us in that it could be made much cheaper and would be much more certain to work well than if the fly-paper required to be folded. We made that year about fifteen thousand double sheets, equal to sixty of our present cases, amounting to about two hundred and seventy dollars. Considerable of this paper was returned to us at the close of the season in a damaged and worthless condition. We had about five hundred dollars invested in special machinery, building, stock and wages paid out, which money was earned by William Thum, my partner, while working in our father's drug store. I spent one year's time in inventing and manufacturing.

At the close of the season we were convinced that the fly-paper, — the way we made it, — was a failure, and that we could not carry on the business as we had intended, that is, to make it a national one, which required at times, long storage and also to stand rough handling during transportation, unless some practical method were devised by which the oozing of the sticky material could be prevented. During the season of 1882, while we were still manufacturing this fly-paper, we had noticed the nature of the sticky ma-

terial to flow, even before we delivered it to the purchaser, and we found then that the paper would be a failure as we made it. This paper was about as good as any on the market at that time. It was at this time when the clamping frame was suggested for compressing the edges of the sheets, — such an one as we have a patent on. Among other suggestions was the one of applying some material or substance directly around the sticky material, between the margins of the sheets, to act as a sort of barrier against the flow of the sticky material, but what this substance or material could be was entirely unknown to us. It required to be sufficiently adhesive to withstand all common use, but still not sufficiently adhesive to tear the paper in trying to separate the sheets. It was also required to be of such a nature that it could be applied with simple and cheap machinery, my brother's wages having been about used up, and his earnings were only a dollar a day and his board. That fall and the greater part of the winter we experimented a great deal without any success, until some time in January, 1883, when a certain material came into my mind which I thought would answer the purpose. This was a material which we had been using in the fly-paper business for a number of years in the sticky material used on the paper, but always in combination with other material. I suggested this material to my brother, who seemed to have little faith in it. My father, who heard me tell my brother, was then fifty-eight years old, and in the drug business at least twenty-five years. He laughed at the idea, and made the remark that, if we applied that material between sheets of paper, we never could get them apart without tearing them. Nevertheless, I at once got some of the material and applied it between two strips of paper with exactly the results which I predicted. This happened in the evening. The next day I made some small sheets with the border and sticky material in the same position as it is now placed on Tanglefoot. In separating these sheets and also in handling them, I found that the border was slightly too brittle. I then added to it other material, also the same as we had been using for a number of years in the fly-paper business. I experimented with this composition until I had about the right proportions. This border was used on all fly-paper which we sold in the years 1883 and 1884, and perhaps longer. We made about twenty-two thousand double

sheets in these two years, most of which was made in 1884, the greater part of the year 1883 being spent at inventing and designing and building model and large machinery to turn out this product. Twenty-two thousand sheets are equal to eighty-four cases, amounting to about $350. Comparatively large lots of this paper were shipped to San Francisco and New York. I am not certain as to when this paper was made, but I am certain that it had the previously-mentioned border. This paper proved entirely satisfactory, none of it being returned to us. We also received a letter from our San Francisco customer, stating that it was crowding their local makes out.

Nearly all of the model machinery which was made in the early days, we still have on hand in good working order, in which the chemical material used at that time can be found, which material also plainly shows its age.

[*Counsel for the defendants objects to this answer as not being responsive, as containing matters of hearsay evidence, and as wholly incompetent and irrelevant.*]

Int. 4. To what was the damaged condition of the paper which you made during your first season due?

Ans. Partly to the semi-liquid nature of the sticky material, and also the pressure of the sheets being placed one above another in a box. It is also very likely that during transportation the sheets were stood on edge. This would greatly facilitate the oozing of the sticky material, there being nothing to prevent the sticky material from flowing except, perhaps, the capillary attraction of the paper, which is not sufficient.

Int. 5. State what has been the record of your paper when sold in competition with that of other makers, both as to amount of sales and as to the satisfaction it has given to dealers and consumers.

[*Objected to as asking the witness for an expression of opinion as an expert, he not having been shown to be such, and not having had any experience as to the sale of fly-papers of other manufacturers, and also as calling for evidence which on its nature must be hearsay.*

Counsel for complainants withdraws the question at this time without

waiving his right to propound the same at another time, and substitutes another question therefor as follows:]

Int. 6. Please state as nearly as you can recollect what have been the amounts of sales of your paper, separating the same into the different amounts sold in each season, so far as you can.

Ans. In 1882, about $270 worth; 1883, practically nothing; 1884, about $350 worth; 1885, about $1,500 worth; 1886, about $3,000 worth; 1887, about $7,000 worth; 1888, about $11,500 worth; that is all I wish to tell.

Int. 7. Please state what amount of capital you now have invested in the business of manufacturing fly-paper, and in a general way, from what sources you derive the same

[*Objected to as immaterial and irrelevant.*]

Ans. We have invested about $13,000 in special machinery invested and designed by myself; about $19,000 in a semi fire proof building, and the rest in stock. Outside of the business we have property amounting to about $2,500.

After the year 1883, no money was invested in the business except profits derived therefrom. Up to the end of 1883, we had probably spent $700, which was earned by William Thum.

[*Answer objected to as not responsive, the witness having refused to state the amount invested in stock as specially called for in the interrogatory.*]

Int. 8. What amount of losses by the return of damaged paper have you sustained during the last two or three years?

[*Objected to as immaterial and irrelevant.*]

Ans. I cannot give it exactly, but it is practically nothing.

Int. 9. Give the figure as nearly as you can.

Ans. I should say, perhaps one twenty-fifth of one per cent.

Cross Examination by EDWARD B. CALLENDER, Esq., *of Counsel for Defendants.*

Cross-Int. 10. You are the Otto Thum to whom these Letters Patent were granted, are you?

Ans. Yes, sir.

Cross-Int. 11. And you were eighteen years old at the time these Letters Patent were granted, No. 278,294, May 22, 1883?

[*Objected to as irrelevant and immaterial.*]

Ans. Yes sir.

Cross-Int. 12. And in answer to Int. 3, you stated that it was suggested that a border should be used which should prevent the flow of the sticky material; will you state who made that suggestion?

[*Objected to as incompetent, irrelevant and immaterial, the embodiment of the suggestion of another patent not being sufficient to invalidate Letters Patent.*]

Ans. I can't say for certain, but I have good reason to believe that I did, I having spent all my time at the fly-paper business while my brother was in the drug business.

Cross-Int. 13. Had not you derived that suggestion from reading any of the books in your father's drug store?

[*Objected to for same reasons as to last interrogatory.*]

Ans. I had not.

Cross-Int. 14. Did you not say in your application for this patent that you knew there was this matter of the margin around other adhesive substances used in medical practice, as a plaster?

[*Objected to as calling for secondary evidence, the patent being its own best evidence of its contents, and the file wrappers heretofore introduced by defendants disclosing the fact that the suggestion of disclaimer was made by the United States Patent Office and did not originate with the applicant.*]

Ans. It does say on the application of a plaster with an adhesive border, but I knew nothing of this until after the application was filed. We received a letter from our attorney in which he stated that the examiner found this old plaster. I might have heard, when I was in the drug business, that there were plasters made with a border, and I was very apt to hear it if any such plasters were made with a border while I was there, but I have never remembered anything of the kind.

Cross-Int. 15. During the time you were in the drug business did you not see in the store a large number of plasters made with a border?

[*Question objected to as irrelevant and immaterial.*]

Ans. I did not.

Cross-Int. 16. Did you not in that store ever sell that kind of plasters, or see them sold?

[*Same objections.*]

Ans. I never sold them, and if any were sold they were made in the store. I don't remember seeing any made or sold.

Cross-Int. 17. This store was a retail drug store, was it not?

Ans. Yes sir.

Cross-Int. 18. Now don't you know, Mr. Witness, from your experience in the drug business that all proprietors of stores of that nature have to make that style of plaster with a border for application to the body, and that they did in 1882?

[*Same objections.*]

Ans. I don't know it and I don't believe it.

Cross-Int. 19. Don't you know from your experience in the drug business that all proprietors of stores of that nature have to make that style of *blister* with a border for application to the body, and that they did in 1882?

[*Same objection, and also the dissimilarity of function between the two devices being radical and there being no possibility of their being substituted the one for the other, further cross-examination of the witness upon this subject is objected to, and counsel for complainants moves to strike out the questions relating thereto already propounded.*]

Ans. The only blister plaster that I know much about, and that mostly from experience in using it, is the same as is used today, and I could furnish proof that that doesn't require a border to make it stick.

Cross-Int. 20. Did you ever see any blister plaster spread or did you ever make one yourself?

[*Same objections, and counsel for complainants repeats his motion to strike out.*]

Cross-Int. 21. Did you ever read a medical work, Mohr, Redwood & Proctor's Pharmacy?

[*Same objections, and counsel repeats his motion to strike out and calls attention to the fact that the reference here made was considered in the proceedings upon the application for one of the Letters Patent in suit in the United States Patent Office, and was held to be substantially different therefrom.*]

Ans. I did not.

Cross-Int. 22. Were you not, when in the drug business, in the habit of consulting some work on that subject of pharmacy or some other medical work of like nature?

[*Same objections and motion.*]

Ans. I don't remember that I did.

Cross-Int 23. Will you swear that you didn't?

[*Same objections and motion.*]

Ans. No.

Cross-Int. 24. Now, didn't you receive the idea of this invention from some suggestion which you found in some medical work with reference to blisters and plasters, and the method of having them spread?

[*Same objections, and also that witness has already denied receiving the suggestion from such source, and same motion as before is made.*]

Ans. I did not.

Cross-Int. 25. Didn't your father suggest the idea of this invention to you?

[*Same objections and motion.*]

Ans He did not.

Cross-Int. 26. State your father's name and whether he is living?

[*Objected to as irrelevant and immaterial.*]

Ans. William Thum; he is dead.

Cross-Int. 27. State the amount of your sales and business in 1889, 1890 and 1891, which you omitted to do in answer to direct Int. 6.

[*Objected to as calling for disclosure of witness's affairs, and counsel is asked to state on the record what the bearing of the question is and what he expects to prove thereby.*

Counsel for defendants, unless so ordered, objects to state the evidence which he expects to obtain inasmuch as the question is framed to obtain from the witness what he would have answered had he answered in full Int. 6 put to him by complainants' counsel.

Counsel for complainants calls attention of defendants' counsel to the fact, that his question does not call for a disclosure of defendants' evidence but only of what facts he expects to prove by witness's

answer with their bearing, and objects to the question as not proper cross examination, and gives notice that by persisting therein counsel makes the witness his own.]

Ans. I don't wish to do so.

Cross-Int. 28. [*Cross-Int.* 27 *is repeated.*]

[*Counsel for defendants requests the examiner to instruct the witness that he must answer.*

Counsel for complainants makes the same objections, and gives the same notice to strike out the repetition of Cross-Int. 27.

The examiner declines to give the instruction asked for, stating that it is the sole duty of an examiner under Equity Rule 67 *to put the questions propounded by counsel to the witness and to take his answer thereto, and to state to the Court such facts connected with the examination as he shall deem it advisable to state.*]

Ans. As near as I can remember, not having known for some time, in 1889 it was about $30,000, in 1890 about $55,000, in 1891 about $100,000.

Cross-Int. 29. In your answer to Int. 7, you state that the amount of $13,000 of your capital is invested in machinery, $19,000 in a semi fire proof building and the rest of your capital in stock; will you state now how much the rest of your capital which is invested in stock amounts to?

[*Objected to; counsel for defendants having objected to Int.* 7 *as immaterial and irrelevant, and counsel for complainants moves to strike out the question now propounded.*]

Ans. Just how much is invested at the present time I do not know, but by the time the season begins it will be about $50,000.

Cross-Int. 30. As to the eighty-four cases manufactured on or about 1883 or 1884, and of which a part was shipped to San Francisco and to New York, as stated by you on your direct examination, will you give the names and addresses of all the parties in San Francisco and New York to whom you shipped those lots at that time?

[*Objected to as irrelevant and immaterial, and as fishing for evidence to be used on behalf of defendants.*]

Ans. C. F. Richards & Co., San Francisco; J. J. Mack & Co.,

San Francisco; W. H. Schieffelin & Co., New York; and, I think, Lehn & Fink, New York. Those are all I remember.

OTTO THUM.

Attest: JOHN G. STETSON, *Examiner*.

DEPOSITION OF BENJAMIN D. PETERSON.

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. Please state your name, age, residence and occupation.

Ans. Benjamin D. Peterson; fifty; Boston, Mass.; manufacturers' agent.

Int. 2. Do you know the complainants in this suit?

Ans. Yes, sir.

Int. 3. Do you have any business dealings with them, and, if so, what is the nature of those dealings?

Ans. The sale of sticky fly-paper, called "Tanglefoot", in the New England States.

Int. 4. Are you their exclusive agent or not?

Ans. Yes, sir; for the New England States.

Int. 5. How long have you been such agent?

Ans. Since, I think, March, 1891.

Int. 6. State what has been the amount of your sales for the account of the complainants.

Ans. Last season the sales amounted to betwen four thousand and five thousand cases?

Int. 7. Did you have complaint made to you of the quality of the paper which you sold, or did you have any of it returned to you?

Ans. Never to my knowledge.

Int. 8. What proportion of the fly-paper business in New England have you obtained, so far as you are able to state?

[*Objected to as immaterial, irrelevant and incompetent.*]

Ans. As near as I can judge, out of the different makes, from half to two-thirds of the trade.

Int. 9. State how long you have been a wholesaler and what extent of territory your sales have covered.

Ans. Nearly fifteen years, and all of the New England States.

Cross Examination by EDWARD B. CALLENDER, Esq., *of Counsel for Defendants.*

Cross-Int. 10. In the course of your occupation have you ever consigned or sold any of the sticky fly-paper such as is described as having been sold by the defendants in this case?

Ans. No, sir.

Cross-Int. 11. Have you ever sold any other paper than the Tanglefoot, so called?

Ans. No, sir.

Cross-Int. 12. Are you familiar with the style of fly-paper such as is described as sold by the defendants in this case, the Mammoth Fly Paper, so called?

Ans. Yes, sir, perfectly.

Cross-Int. 13. And how long have you known about it?

Ans. Since the spring of 1891.

Cross-Int. 14. And since the spring of 1891 you have sold from four thousand to five thousand cases of Tanglefoot as you have stated. How much did you receive per case?

[*Objected to as calling for a disclosure of complainants' business which has no relevance or bearing on these questions in controversy and witness is instructed by counsel for complainants that he need not answer the questions unless he so desires.*]

Ans. That depended somewhat on whom I sold to and how much I sold.

Cross-Int. 15. What was the wholesale list price per case?

[*Same objections.*]

Ans. The strictly wholesale price is $3.80 per case.

BENJAMIN D. PETERSON.

Attest: JOHN G. STETSON, *Examiner.*

BOSTON, Feb. 4, 1892.

Counsel for complainants puts in evidence original Letters Patent of the United States No. 278,294, granted to Otto Thum, May 22, 1883, for improvement in fly-paper, and the same is marked "Complainants' Exhibit Thum Patent No. 1, J. G. S., Ex'r"; also

Letters Patent of the United States No. 305,118, granted to Otto Thum, Sept. 16, 1884, for the manufacture of fly-paper, and the same is marked "Complainants' Exhibit Thum Patent No. 2, J. G. S., Ex'r"; also certified copy of assignment of said two Letters Patent to the complainants in this suit, and the same is marked "Complainants' Exhibit Assignment, J. G. S., Ex'r"; also affidavits of Walter P. Keene and Ellis Spear, and Ellis Spear in reply, as referred to in the deposition of the said Walter P. Keene and Ellis Spear taken in this case Jan. 12, 1892, in Washington, D. C., before Henry E. Cooper, Notary Public, and the same are marked, respectively, "Exhibit Keene Affidavit, J. G. S., Ex'r" and "Exhibit Spear Affidavit No. 1, J. G. S., Ex'r" and "Exhibit Spear Affidavit No. 2, J. G. S., Ex'r"; also samples of Mammoth fly-paper referred to by the witness, Walter P. Keene, and the same are each marked "Complainants' Exhibit Keene Samples, J. G. S., Ex'r"; also a letter from defendants to Walter P. Keene, dated Boston, Aug. 20, 1891, referred to in said Keene's deposition, and the same is marked "Complainants' Exhibit Andrews Letter, J. G. S., Ex'r"; also a bill dated Aug. 20, 1891, from J. A. Andrews & Co. to Walter P. Keene, also referred to in said Keene's deposition, and the same is marked "Complainants' Exhibit Andrews Bill, J. G. S., Ex'r".

Attest: JOHN G. STETSON, *Examiner*.

COMPLAINANTS' EXHIBIT ASSIGNMENT, J. G. S., EX'R.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, GREETING:

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Otto Thum, June 17, 1887, and recorded in Liber G[37], page 31.

Said record has been carefully compared with the original, and is a correct transcript of the whole thereof.

In testimony whereof, I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this seventeenth day of August, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

[SEAL] W. E. SIMONDS,
Commissioner.

Whereas, I, Otto Thum, of Grand Rapids, in the County of Kent, and State of Michigan, did obtain Letters Patent of the United States for Sticky Fly-Paper, and the manufacture of the same, which Letters Patent bear date May 22, 1883, and Sept. 16, 1884, and are numbered 278,294 and 305,118; and whereas, William Thum, of same place, is desirous of acquiring an undivided half part of the entire interest in and to said Letters Patent, and the improvements therein contained:

Now, therefore, to all whom it may concern, be it known that for and in consideration of the sum of one dollar, in lawful money of the United States, to me in hand paid, by the said William Thum, and for other good and valuable considerations, the receipt of which is hereby acknowledged, I, the said Otto Thum, have sold, assigned, transferred and set over, and do hereby sell, assign, transfer and set over unto the said William Thum, his executors, administrators and assigns, an undivided one-half part of all the right, title and interest which I have or may have in and to the said Letters Patent, and any extension or reissue of the same throughout the United States and the territories thereof, the same to be held and enjoyed by the said William Thum for his own use and behoof, and for the use and behoof of his executors, administrators and assigns to the full end of the term for which said Letters Patent are or may be granted, and all extensions and reissues thereof.

In testimony whereof, I have hereunto set my hand and seal, this seventeenth day of June, A. D. 1887. OTTO THUM.

CHRISTIAN SCHMIDT.
SAM. J. NORTH.
Recorded June 22, 1887.
J. F. F.
G. W.

EXHIBIT KEENE AFFIDAVIT, J. G. S., EX'R.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO AND WILLIAM THUM, *Complainants*,

v.

JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. BULLARD AND WILIAM A. DOLE, *trading under the name and style of* JOHN A. ANDREWS & CO., *Respondents*.

AFFIDAVIT OF WALTER P. KEENE UPON MOTION FOR PRELIMINARY INJUNCTION.

STATE OF MASSACHUSETTS,
COUNTY OF ESSEX, ss.

Walter P. Keene, being duly sworn, deposes and says that he is a resident of the city of Lynn, in the State of Massachusetts; that upon the nineteenth day of August, 1891, he ordered from the respondents, John A. Andrews & Co., by letter, forwarded to them at their place of business, Nos. 5 and 7 Commercial Street, in the City of Boston, a package of Mammoth Fly-Paper; that upon the twenty-first day of August, 1891, he received from the respondents, through the United States mail, a letter which is herewith returned, marked "Complainants' Exhibit Andrews Letter"; that upon the third day of September, 1891, he received by express from the respondents a carton of the said Mammoth fly-paper, samples of which are returned extracted from said carton, marked "Complainants' Exhibit Keene Samples"; that the said samples, herewith returned, are in the same condition as when extracted from said carton by this deponent; that the bill for the said carton of Mammoth fly-paper is herewith returned, marked "Complainants' Exhibit Andrews Bill".

And deponent further says that he is not related by blood or marriage to any of the parties, nor interested in the result of this cause.

And further deponent saith not. WALTER P. KEENE.

Sworn and subscribed before me this ninth day of September, 1891.

[SEAL] CHARLES H. WELCH, *Notary Public.*

EXHIBIT SPEAR AFFIDAVIT NO. 1, J. G. S., EX'R.

UNITED STATES CIRCUIT COURT,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO AND WILLIAM THUM, *Complainants,*

v.

JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. BULLARD AND WILLIAM A. DOLE, *trading under the name and style of* JOHN A. ANDREWS & CO.

AFFIDAVIT OF ELLIS SPEAR

UPON MOTION FOR PRELIMINARY INJUNCTION.

WARREN KNOX CO.,

STATE OF MAINE, ss.

Ellis Spear, being duly sworn, deposes and says that he is a resident of the city of Washington, in the District of Columbia, and by occupation a patent attorney and solicitor, and expert in patent causes; that he has been engaged in the investigation of patent matters, the preparation of specifications, and the study of patent law for more than twenty-five years; that he has been employed in the United States Patent Office as an assistant examiner, examiner, examiner-in-chief, assistant commissioner, and finally as Commissioner of Patents, from which office he resigned to engage ever since in the continuous practice of his profession; that he is familiar with mechanical trades and processes in general.

And deponent further saith, that he is familiar with the contents of the Letters Patent No. 1 upon which this suit is based; that he

prepared one of the specifications, and prosecuted the application to issue; that he is otherwise familiar with the state of the art, and is fully acquainted with the scope and validity of the Letters Patent in question; that he has examined and is familiar with the appearance of the product, made and put upon the market by the complainants, and that said product conforms to the description and claims in the said Letters Patent contained; that he has also examined the product made and put upon the market by the respondents, John A. Andrews & Co., and that the said product, in his opinion, conforms both to the products of the complainants, and to the description thereof contained in the Letters Patent herein named; that in his opinion it is infringement of the claim of Letters Patent 278,294, and of the third claim of Letters Patent 305,118.

And further deponent saith not.

ELLIS SPEAR.

Sworn and subscribed before me this twenty-ninth day of August, 1891.

[SEAL] J. M. STUDLEY,
Justice of the Peace.

STATE OF MAINE,
KNOX, ss.

CLERK'S OFFICE, SUPREME JUDICIAL COURT,
ROCKLAND, Aug. 29, A. D. 1891.

I, Ralph R. Ulmer, Clerk of the Supreme Judicial Court for said County of Knox, being a Court of Record, do hereby certify that J. M. Studley is, and at the date of his certificate to the paper hereto annexed, was, an acting JUSTICE OF THE PEACE, within and for the State of Maine; that he is duly commissioned and qualified to administer oaths, and take acknowledgments of deeds and other instruments in writing, in the State aforesaid; and that the signature purporting to be his is genuine.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Supreme Judicial Court for said State, the day and year first above written.

[SEAL] RALPH R. ULMER, *Clerk.*

EXHIBIT SPEAR AFFIDAVIT NO. 2, J. G. S., EX'R.

CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO AND WILLIAM THUM, *Complainants*,

v.

JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. BULLARD AND WILLIAM A. DOLE, *trading under the name and style of* JOHN A. ANDREWS & CO.

AFFIDAVIT OF ELLIS SPEAR IN REBUTTAL UPON MOTION FOR PRELIMINARY INJUNCTION.

Ellis Spear being duly sworn, deposes and says, that he is the same Ellis Spear who made an affidavit in support of the motion for a preliminary injunction, which affidavit is already on file in the cause; that since making said affidavit he has further examined the Letters Patent in suit with reference especially to the state of the art, and particularly with reference to the answer of the respondents and to the extracts from Mohr & Redwood's Pharmacy cited by the respondents in their said answer; that in his opinion the method of manufacture of medical non-adhesive plasters set forth in the said extract is not the same as is the method of manufacturing sticky fly-papers set out in the specification of the Letters Patent in suit; nor, in his opinion, is the product of the said manufacture the same construction, appearance or operation as Thum's sticky fly-paper.

The deponent further says, that he bases his opinion upon the facts that the functions of the two devices are different and that they could not be used the one for the other; that the medical plaster could not be used for catching flies, nor could the fly paper be made

to adhere to the body, either by the method used by Thum or by the method described in the extract under consideration; that the plaster as made has an adhesive border applied to it for the purpose of preserving its position upon the body, and that this adhesive border has no other function, and could not restrain the plaster within bounds if it were of an oozing nature under any ordinary conditions; whereas Thum's sticky fly-paper is necessarily of an oozing nature, and the adhesive border is designed to prevent oozing, and has no other function; that it is not intended to prevent displacement of the sheets, nor can it do so, but such displacement is prevented by the sticky material in the centre of the sheets; that he bases his opinion further upon examinations of the various exhibits already on file in this case, and particularly upon Complainants' Exhibits A to H, inclusive, and of commercial plasters bought in the open market.

And further deponent saith not.

ELLIS SPEAR.

Sworn and subscribed before me this fifteenth day of December, 1891.

[SEAL] CHARLES H. WELCH,
Notary Public.

COMPLAINANTS' EXHIBIT ANDREWS LETTER, J. G. S., EX'R.

JOHN A. ANDREWS & CO.,

WHOLESALE GROCERS,

5 AND 7 COMMERCIAL AND 8 COMMERCE STREETS.

JOHN A. ANDREWS.
WM. Y. WADLEIGH.
B. F. BULLARD.
W. A. DOLE.

BOSTON, Aug. 20, 1891.

Mr. WALTER P. KEENE:

Dear Sir, — Your favor 19th rec'd and we send C. O. D. as you request one carton fly-paper. Price for single carton $1.25, case containing 5 cartons $5.50. Would be pleased to have your order for one or more cases.

Yours truly,

JOHN A. ANDREWS & CO.

COMPLAINANTS' EXHIBIT ANDREWS BILL, J. G. S., EX'R.

JOHN A. ANDREWS & CO.,

WHOLESALE GROCERS,

5 AND 7 COMMERCIAL AND 8 COMMERCE STREETS.

JOHN A. ANDREWS.
WM. Y. WADLEIGH.
B. F. BULLARD.
W. A. DOLE.

Telephone No. 1392. BOSTON, Aug. 20, 1891.

Sold to WALTER P. KEENE.

Terms, on Demand with interest after C. O. D. All claims for Allowance must be made within 5 days after receipt of Goods.

1 carton Mam Fly paper 1 25

Paid to express.

J. A. ANDREWS & Co.

EVIDENCE FOR DEFENDANTS.

TAKEN PURSUANT TO THE SIXTY-SEVENTH RULE OF THE SUPREME COURT OF THE UNITED STATES, IN EQUITY, AS AMENDED, BEFORE

LOUIS GIRARDIN,
Notary Public, Special Examiner.

BOSTON, Feb. 23, 1892.

Present: THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants;*
JOHN McC. PERKINS, Esq., *of Counsel for Defendants.*

Counsel for complainants objects to the taking of the depositions, on the part of the defendants before a Notary Public, not a standing examiner in equity of the Circuit Court of the United States, for this district, by reason of the doubt as to the validity of the oath taken before such an officer, and calls attention to his letter of recent date to defendants' counsel, wherein he gives notice that he will insist upon this objection; and further states upon the record that he does not wish in any manner to reflect upon the Notary employed to take these depositions, in whose capacity and integrity he has no doubt.

DEPOSITION OF WILLIAM P. CLOUGH.

Direct Examination by JOHN McC. PERKINS, Esq., *of Counsel for Defendants.*

Int. What is your name, age and residence?

Ans. W. P. Clough; age, forty-three years; Everett, Mass.

Int. 2. Have you seen fly-paper, such as is seen in the market?

Ans. Yes, sir; different kinds of fly-paper.

Int. 3. Have you ever seen any fly-paper similar to what I now hand you marked "Clough A"?

[*Objected to by complainants' counsel as leading, as immaterial, as irrelevant, and improper. Witness should be asked to state what kinds of fly-paper he has seen.*]

Ans. I have seen that fly-paper before, but I have never seen any similar.

Int. 4. What kinds of fly-paper have you seen?

Ans. I have seen several kinds, at the time I was connected with this fly-paper. I was well posted in different kinds of fly-paper; it has been some time since I was connected with it, and I have lost the names of the different manufacturers.

[*Objected to by complainants' counsel, as volunteered and irresponsive.*]

Int. 5. When you say, "at the time I was connected with this fly-paper," etc., — now will state at what time you referred to?

Ans. The time we manufactured the paper.

Ans. 6. Who do you mean by we?

[*Objected to by complainants' counsel as immaterial.*]

Ans. Mr. Willson and myself.

Int. 7. Please state the full name and residence of the Mr. Willson you speak of, and also state the date or year when you and Mr. Willson manufactured fly-paper.

Ans. John W. F. Willson, G Street, South Boston, manufactured the fly-paper at 479 Broadway, South Boston, I think, in 1877 and 1878 and 1879.

Int. 8. Will you now describe the fly-paper which you and Mr. John W. F. Willson, of South Boston, Mass., manufactured in 1877, 1878 and 1879?

Ans. We first manufactured a fly-paper, — "the sticky fly-paper" which it was called, — that was applied, — the sticky part was applied with a brush the first year, in 1877; we had trouble with the sticky part running out; the next year we experimented by applying a border of parafine and soap and wax, and several other things which we naturally use in experimenting, which proved quite a success.

Int. 9. Will you now explain more fully what and why you used the words, "which proved quite a success", and also describe more fully the character and use of the border which you have spoken of?

[*Objected to by complainants' counsel, in so far as it calls for any contradiction of witness's answer to Int. 3.*]

Ans. The success was that the border held the sticky part from running out, which made the fly-paper more salable; the character

was that the wax formed a ridge which held the sticky part, and when the two sheets came together, it sealed the sticky part up.

[*Answer objected to by complainants' counsel, who moves to strike out the answer as contradictory to Int.* 3.]

Int. 10. You did not state whether or not the border which you described in your answer to Int. 8 was harder, or softer, or what its character was as compared with the sticky part which you applied with a brush. Now, please state more fully the precise character of that border.

[*Objected to by complainants' counsel as leading.*]

Ans. The border was a harder substance than the sticky part; the border was of an elastic nature, somewhat adhesive, to form a ridge; its use, to prevent the sticky part from leaking out, and sticking a number of sheets together, as we put some fifty sheets in in a box.

Int. 11. Please to examine the two sheets of sticky fly-paper marked "Clough A", which I now hand you, and state wherein, and how, fully and in detail, the fly-paper which you and Mr. John W. F. Willson manufactured in 1877 differed from that.

[*Question objected to as irrelevant and immaterial, and as not tending to prove or disprove any matter in issue by the bill and answer.*]

Ans. It was of the same character as that; we used different paper later than that was made; that paper was used in 1878.

[*Complainants' counsel objects to conversation with witness off the record.*

Defendants' counsel totally denies the insinuations made by complainants' counsel just noted by the Special Examiner. Defendants' counsel has only repeated to witness Int. 10 *for the further information of witness, and in order that he might fully answer Int.* 10.

Complainants' counsel again requests defendants' counsel to make his repetition of questions, or any other communications, a matter of record, and states that he has no intention of reflecting upon the good faith of counsel.

Answer objected to by complainants' counsel, who moves to strike out as contradicting witness's answer to Int. 3.]

Int. 12. What do you mean by the words, "It was of the same character as that"? Was it made in the some way, was the sticky part

or the border, or both sticky part and border made in substantially the same way, and for the same purpose as is shown by exhibit marked "Clough A".

[*Question objected to as leading, incompetent and improper, being a question for an expert, as which witness has not been properly qualified, he having been called to testify as to matters of fact.*]

Ans. It was made in the same way as that, only age has changed the exhibit.

[*Complainants' counsel objects again to repetition of questions or any part of this examination taking place off the record. And defendants' counsel totally denies that there has been any conversation with witness relating to this examination that is not a matter of record. By Int.* 12, *there are two or three parts to it; after the first part had been answered, defendants' counsel only read to witness one by one the other parts. Complainants' counsel renews his objection.*

Witness continues: It was made in the same way, the sticky part and the border were made in the same way.

[*Complainants' counsel moves to strike out the answer upon all the grounds of objection stated as to the Int.* 12 *and upon the further ground that it contradicts the witness's answer to direct Int.* 3.]

Int. 13. When did you first manufacture this sticky fly-paper with a wax border, which you have just described, and about how long did you and Mr. John W. F. Willson continue the manufacture and sale of this sticky fly-paper with a wax border?

Ans. In 1878 I manufactured with Mr. John W. F. Willson, the sticky fly-paper with a wax border, and continued with Mr. Willson for two years manufacturing sticky fly-paper with a border.

[*Complainants' counsel moves to strike out the answer as in direct contradiction to witness's previous testimony.*]

Int. 14. Did you and Mr. Willson sell this sticky fly-paper with a wax border in 1878, any where, and, if so, where, and to whom did you sell it, or was it in public use, or used in public in 1878?

[*Objected to as leading.*]

Ans. We did sell it in 1878, to all the wholesale trade in Boston, and in other cities and towns throughout New England and the Canadas; we sold it to wholesale druggists and grocers, and peddlers.

Int. 15. Can you mention by name or by street or number, any

druggists or grocers or peddlers in Boston or vicinity, that you did so sell that sticky fly-paper to, with a wax border, in 1878?

Ans. We sold it to all the wholesale druggists, such as Smith, Doolittle & Smith, Tremont Street under the Museum; to Weeks & Potter, Washington Street, Boston; George C. Goodwin, Hanover Street, Boston; Cutler Bros., Hamilton Place, Boston; Charles E. Moody, grocer, Commercial Street, Boston; and others too numerous to mention.

Int. 16. When, or about when, did you and Mr. John W. F. Willson cease to manufacture and sell the sticky fly-paper with a wax border, as partners, or in copartnership in the business?

Ans. In October, 1879, we ceased operations such as manufacturing the fly-paper etc., so far as I was concerned.

Cross Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

[*Complainants' counsel moves to strike out the entire deposition of this witness on the grounds already set out in the opening sheets thereof, and further upon the ground of contradiction, as to material points therein contained, and cross-examines* de bene esse *only, without waiving this his objection, each question asked being understood to be* de bene esse; *and he further gives notice, that he will avail himself of this his objection, and his motion at the hearing.*]

Cross-Int. 17. What part of the business were you employed about while a partner with Mr. John W. F. Willson?

Ans. I was employed in the general parts, in the manufacturing of several articles.

Cross-Int. 18. Please explain fully what you mean by the general parts.

Ans. The general parts of getting goods into shape, making up of goods, introducing them on the market, buying of material, studying up new ideas for new goods, inventing cheaper ways of manufacturing etc.

Cross-Int. 19. Please state what goods, other than sticky fly-paper, you were engaged in manufacturing while in partnership with Mr. John W. F. Willson.

Ans. The manufacture of fly-paper, toilet powders, mustard plasters, court plasters, perfumery, toilet articles in general.

Cross-Int. 20. Were you engaged during the time to which you have referred, in the manufacture of all these articles, at the same time?

Ans. Yes, sir.

Cross-Int. 21. Was it your custom to sell these articles to the same dealers to whom you have referred as those to whom you have sold sticky fly-paper, with the sealing border during the years 1878 and 1879?

Ans. It was not; we sold our toilet articles to druggists' supplies, wholesale druggists, retail druggists, fancy goods dealers, etc.

Cross-Int. 22. In 1878 and 1879 was not the trade in sticky fly-paper mostly in the hands of wholesale druggists?

Ans. No, sir, it was not; it was in the hands of peddlers and wholesale grocerymen.

Cross-Int. 23. Have you any memorandum made at that time, by which you can refresh your memory as to the events to which you have testified, or do you speak from memory only?

Ans. I have memorandum made at that time. I have receipts for goods sold and orders from parties.

Cross-Int. 24. And from these memoranda you have refreshed your memory, have you, before going on the stand to testify in this case, so that you are able to speak with certainty?

Ans. I have the memoranda, I don't know that I have refreshed my memory with them. I remember it perfectly well.

Cross-Int. 25. Do you mean then to state positively that you have not consulted these means of information as to dates, or any other facts?

Ans. I have as regards to dates.

Cross-Int 26. What do you mean then in your answer to Cross-Int. 24 by your statement that you do not know whether you have refreshed your memory by these memorandum or not?

Ans. I do not remember of making any such an answer.

[*Counsel for complainants requests the Examiner to read the answer to Cross-Int. 24 to the witness.*]

Cross-Int. 27. [*Cross-Int. 24 and answer repeated to witness.*]

Ans. I may have looked in book to see if I was in business with Mr. Willson at that date.

Cross-Int. 28. What book did you look in?

Ans. An account book that I had.

Cross-Int. 29. Did this account book relate to your partnership affairs?

Ans. No, sir, to personal affairs.

Cross-Int. 30. What made you look in that book to ascertain the date?

Ans. Handy book to look at, rest of my accounts were packed away.

Cross-Int. 31. What date did you look for?

Ans. Looked to see what year we were in company together.

Cross-Int. 32. Have you that account book, and those receipts and orders, or other memoranda with you?

Ans. No, sir; I have not. I have them at home.

[*Counsel for complainants calls for the production and proper qualification of the account book, receipts and orders, to which this witness has referred, that they may be examined and marked in evidence, by the Examiner, and in default of such production moves to strike out all of the witness's deposition without waiving his former objection and motion to strike out.*]

Cross-Int. 33. In examining your receipts, orders and account book, how did you identify the receipts and orders and entries in the account book bearing the dates to which you wished to refer?

Ans. I have not examined them. I looked into the account book to see what year I was there.

Cross-Int. 34. Did you, or did you not, read over those entries in the account book?

Ans. There are no entries in that account book relating to the partnership. I told you before, this was a personal account book.

[*Complainants' counsel moves to strike out the answer as irresponsive. Question repeated.*]

Cross-Int. 35. [*Cross-Int.* 34 *repeated.*]

Ans. I did not.

Cross-Int. 36. Then how do you know to what they referred, so that you are enabled to fix these dates?

Ans. I went in company with Mr. Willson after the acceptance of the public building that I was superintendent of. That fixed the date.

[*Adjourned.*]

MARCH 7, 1892.

Cross-Int. 37. Please describe the method by which you made this sticky fly-paper with a wax border, while working with Mr. Willson.

Ans. We applied the wax border with a form; we applied the sticky with rolls.

Cross-Int. 38. Please describe the construction and operation of those rolls.

Ans. We had three rolls, one followed after the other by hand power and connected with cogs and belt. It would take me some time to give full description of the machine.

Cross-Int. 39. Take as much time as you wish, and describe the machine fully.

Ans. I have not the time today to go into the details of it.

Cross-Int. 40. Your time today is at the disposal of the Court and you must answer the question.

Cross-Int. 41. [*Cross-Int.* 39 *repeated.*]

Ans. I have an hour and one half; you may use it as you see fit.

[*Answer objected to as irresponsive, and question repeated, and witness is informed that if he persists in evading the question counsel will move for his committal for contempt.*

And now comes the defendants' counsel and advises the witness that he is not to pay any attention to the bulldozing threats of the counsel for the complainants. The witness is further advised that he can make such answers to the questions proposed to him as he sees fit, and that in the opinion of the counsel for the defendants he is not in the slightest danger of being committed for contempt of court in so doing.

Complainants' counsel states that the question is admitted a proper one by reason of no objection being made thereto, and insists upon a direct and full response.

The counsel for the defendants informs the witness that the counsel for the complainants has no right to dictate what the answers shall

be to his questions. His only lawful office and duty is to ask questions, while the Special Examiner in this case will note the answers of the witness. Counsel for the complainants is informed that if the answers of the witness are not satisfactory to him to ask other and further questions, and with that the office and right of the counsel for complainants ceases and is at an end so far as the witness is concerned.

Complainants' counsel objects to the interference of defendants' counsel with his right of cross examination, and moves to suppress the deposition of this witness, accordingly, and states upon the record that he has not attempted and does not attempt to bulldoze the witness, or to dictate his answers, but insists again upon having the full answer to his Cross-Int. 39, and declines to propound further interrogatories until this one is answered. Cross-Int. 39 repeated.]

Ans. It has been some eleven years since I saw the machine and I could not give full description of the same, but I believe that there are parts or all of that machine in existence today which could be seen.

[*Answer objected to as irresponsive and volunteered, and as secondary evidence.*]

Cross-Int. 42. [*Cross-Int. 39 repeated, and witness is informed that the description called for must be furnished to the best of his remembrance.*]

[*Witness is informed again by defendants' counsel that the complainants' counsel has no right to use word "must" in describing the character of his answers, and that the Court never will advise him to describe a machine, concerning which his remembrance is not full and clear; on the other hand, that the Court would pay no attention to his testimony if he should attempt to describe a machine, the detail of which he has confessed that he cannot remember a dozen years ago.*

Complainants' counsel again objects to the persistent interference of defendants' counsel, and calls attention to the fact that the word "must" has no reference to the character of the witness's answer, and that respondents' counsel has no right to speak for the Court, and again insists upon an answer to his interrogatory.]

Ans. As I remember the machine, it had three wheels about five

inches in diameter, about ten inches long, with a projecting bead, which travelled in the wax, which formed the border as the paper passed over, and as the paper passed under the second roll, the sticky part was applied, then it passed up and over a third roll and out, which completed the machine. It was turned by a crank. For further information see the machine.

[*Interrogatories hereafter* de bene esse.]

Cross-Int. 43. I am glad we have arrived at some understanding, and that the answer did not take so long as you anticipated. How long did you use this machine?

Ans. One year; the last year that I was there.

Cross-Int. 44. Is it your recollection that the rolls were geared together so that all three moved when the crank was turned.

Ans. All three moved when the crank was turned; don't remember that all were geared together.

Cross-Int. 45. In your answer to Cross-Int. 38, you state "we had three rolls, one followed after the other by hand power, and connected with cogs and belt". Can you not remember where the cogs were, and how they worked?

Ans. As I said before, it has been sometime since I saw that machine. I cannot go into the details of the construction as I do not remember it.

Cross-Int. 46. What was the use of the belt?

Ans. To carry the paper.

Cross-Int. 47. Did the belt pass under the rolls, all of them, or any of them?

Ans. I don't remember the direct course of the belt, now.

Cross-Int. 48. What is your present business, Mr. Clough?

Ans. Architect.

Cross-Int. 49. And you are able, of course, to read drawings, are you not?

Ans. Yes, sir; to a certain extent.

Cross-Int. 50. And also to make them?

Ans. Yes, sir.

Cross-Int. 51. Please sketch on the record a cross section of the arrangement of these rolls.

[*The counsel for the defendants objects to this question because it is*

evidently an impossibility for the witness to make any intelligent free-hand drawings on the record, of a machine which is not before him, and of which he only has, by his own confession in his answers, a dim and misty general idea. It is obvious to any one acquainted with drawings of machines that, in order to make a drawing that shall be intelligent to the Court, the machine itself should be before the draughtsman and drawn to a scale, and the counsel for the defendants further objects to this question, because it was evidently not put in good faith, when it is considered that a drawing of this machine would consume several days' time, and probably a week's time, if the machine itself was before the witness. And the counsel for the defendants further objects to the style of examination in general, of the complainants' counsel, which seems to be mainly conducted with a view to piling up unnecessary costs on the complainants, so that he may make a show or an excuse for taxing the complainants with exorbitant or unnecessary costs for his pretended valuable services.

Complainants' counsel states that the answer was required from the witness, and not from counsel, and objects to counsel coaching the witness under guise of objections, and to the interjection of argument into the record.]

Ans. At the time I was connected with this machine it was a secret of Mr. Willson and myself. We did not care to have any one examine any part of this machine or know what it was. I shall not make a sketch of any part of this machine. It was our invention, and I don't know as the public have seen that machine in full operation. As I said before, I think that there are parts of that machine which can be seen today.

Cross-Int. 52. If such parts of the machine, or the whole machine, as expressed in your answer to Cross-Int. 40, can be seen, why do you object to making the cross section asked for, it not being a working drawing?

Ans. I cannot show the cross section without showing parts of the machinery, without committing myself. I don't know today but what Mr. Willson keeps that machine as a secret.

Cross-Int. 53. If I understand you correctly, you could make such a cross section, but decline to do so upon the ground that it is a trade secret. Am I correct?

Ans. I could make such a cross section, and did make one for that machine. I have given you all the information in regard to this machine that I care to. As I said before, you can see parts of this machine, and I don't know but the whole of it, at this time, and I don't even know that this machine is in existence today, that's all.

[*Complainants' counsel again moves to suppress the deposition of this witness, for his refusal to furnish all the facts in his possession.*]

Cross-Int. 54. You are aware, are you not, that the machine which you state was in use by you in 1879, has been described by another witness produced by your partner, Mr. Willson?

Ans. I do not know anything about it being described by any one else, this machine we used the last year I was with Mr. Willson. We were some three years perfecting it. We had made a number of machines for this purpose before we brought this into general use.

Cross-Int. 55. The Examiner will inform you that such a description has been given by the witness, Charles H. Jenkins. Such being the case, do you still decline to make the cross section of the rollers, called for by my Cross-Int. 51? I call your attention to the fact that my question calls for a sketch of the rollers only, and not of other parts of the machine, and is designed to show the position relative to one another of these rollers.

Ans. I decline to make any sketch of it. I leave that to Mr. Willson as I am not now connected with it. I knew that Mr. Jenkins knew something about some parts of our machine, I think some of it was made in his factory.

Cross-Int. 56. In your answer to direct Int. 3, you state that you continued with Mr. Willson for two years; what two years were they?

Int. 1878 and 1879, and part of 1877.

Cross-Int. 57. And this machine was used only in 1879?

Ans. I don't know about that, that was the year I used it. It may be in use today.

Cross-Int. 58. Was the manufacture of this fly-paper discontinued after 1879, or before?

Ans. It was not discontinued that I know of; I think Mr. Willson manufactures it now; Mr. Willson manufactured a sticky fly-paper

a great many years before I went with him; after I became connected with the fly-paper, we tried to make it the best in the market, this was the result, the fly-paper manufactured when I left him. I think he now manufactures the same at the present time.

Cross-Int. 59. Were you experimenting in getting up this machine before you went with Mr. Willson?

Ans. I was not.

[*Counsel for complainants objects to the evidence of this witness based upon the exhibit "Clough A", the same not having been offered in evidence or marked by the Examiner; and also to the description of the supposed method of manufacture described by him, based upon the machine not offered in evidence, not accounted for, the machine by him described being inoperative to produce the effects assigned to it.*]

WILLIAM P. CLOUGH.

Attest: LOUIS GIRARDIN, *Notary Public, Special Examiner.*

DEPOSITION OF MERRILL S. NOYES.

Direct Examination by JOHN McC. PERKINS, Esq., *of Counsel for Defendants.*

Int. 1. What is your name, age and residence?

Ans. Merrill S. Noyes; age, sixty-one; residence, 25 Bartlett Street, Boston, Roxbury district.

Int. 2. Are you acquainted, or have you been in past years acquainted, with the manufacture and sale of fly-paper of any kind, and, if so, please state fully and in detail your knowledge of such manufacture and sale?

[*Objected to as immaterial and irrelevant.*]

Ans. Yes, sir, I have. I manufacture the sticky fly-paper myself, and do my own selling at the stores. In 1878 and 1879, I was selling fly-paper in Connecticut. I was in a store to sell them some paper, that was in Hartford, Conn.; they said they had got something better than I'd got. I don't say whether this was in 1878 or 1879, that I had this conversation, it was in one of these two years; can't say whether it was the first year or the last one. I asked them what it was, and they said it was a paper with a border on it, to

keep it from sticking together. I asked them if they would let me see it, and they did so, and it was a light colored paper with a border nearly an inch wide on it, the border was darker than the paper. I did not see it after as I did not want to; but store-keepers told me in other places that they had such paper with a border on it; they told me in Willimantic and other places and in Norwich. I did not see any more of it or hear any more of it until lately, that is, fly-paper with a wax border. I didn't see any fly-paper in the market with a wax border after a year or two after 1879; the first fly-paper that I did see with a wax border after then was out here at Maplewood, Mass. I have seen considerable of it since then.

[*Objected to by complainants' counsel as based upon hearsay, and incompetent, as irrelevant, and volunteered, and counsel moves to strike out the answer upon these grounds.*]

Int. 3. Please examine this exhibit marked "Clough A", and state wherein the fly-paper which you saw recently at Maplewood, Mass., differs from that.

[*Objected to on the ground that it involves a question of difference, or identity, proper for an expert, as to which witness has not been qualified, and also as leading and as immaterial, and for want of notice in the answer.*]

Ans. The paper that I saw at Maplewood was a brownish, — darker than a straw color.

Int. 4. My question No. 3 had no reference whatever to the color or quality or fibre of the paper itself, but only in reference to its character as a fly-paper, — that is, a fly-paper with a body of sticky matter, and a harder matter like wax as a border. Please again examine exhibit marked "Clough A", which I now hand you, and state if the fly-paper which you recently saw at Maplewood, Mass., was like or unlike this exhibit; and state in detail its character as compared with this exhibit.

[*Same objections as to previous Int., the same being manifestly leading.*]

Ans. It was like this only it (the paper) was darker. It was like this exhibit which I now hold in my hand, only dark colored.

Int. 5. Did that Maplewood paper have a wax border?

[*Same objections as to previous Int.*]

Ans. It did.

Int. 6. Did that Maplewood paper have a body of sticky substance?

[*Same objections as to previous Int.*]

Ans. It did.

Int. 7. Was that Maplewood paper like exhibit marked "Clough A", with the exception of its color, or the texture or quality of the paper itself?

[*Same objections as to previous Int.*]

Ans. It was.

Int. 8. Was that fly-paper which you saw on sale in 1878 or 1879, at Hartford, Conn., like this Maplewood fly-paper, — that is to say, was the paper at Hartford, Conn., provided with a sticky substance in its central part, and surrounded with a harder or waxy border similar to exhibit marked "Clough A"?

[*Same objections.*]

Ans. It was like this exhibit marked "Clough A".

Cross Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

[*Complainants' counsel moves to strike out the deposition of this witness, upon all the grounds stated in his objections to the deposition of William P. Clough, and upon the further ground of want of notice in the answer, as to the previous use and sale herein alleged.*]

Cross-Int. 9. State the name of the storekeeper in Hartford, Conn., who told you about sticky fly-paper, wax border, in 1878 or 1879.

Ans. I cannot.

Cross-Int. 10. Give the names of those persons who gave you the same information in Willimantic and Norwich, Conn., as set out in your answer to Int. 2.

Ans. I cannot.

Cross-Int. 11. Were those people who gave you the information customers of yours?

Ans. Nothing; only that I was travelling around selling my paper; those that had that paper I did not sell to.

Cross-Int. 12. Give the name of some person or persons in the

towns, named by you in your answer to Int. 2, to whom you did make sales.

Ans. I sold to C. H. Noyes, of Norwich, Conn.; he was a brother of mine. I don't know that I can tell you anything more of their names.

Cross-Int. 13. At that time was this your means of making a living?

Ans. It was awhile in the summer.

Cross-Int. 14. And, during the summer of those years, this was your principal occupation, was it not?

Ans. Yes, sir.

Cross-Int. 15. Did you have regular customers?

Ans. No; only as I found them on the road.

Cross-Int. 16. Did you sell to storekeepers?

Ans. Yes, sir.

Cross-Int. 17. Why did you not sell to the same storekeepers regularly?

Ans. I did, when I found they wanted any.

Cross-Int. 18. And you mean to assert, Mr. Noyes, that during these two years, or during their summer seasons, you made a practice of soliciting trade in sticky fly-paper from storekeepers and others; that you occasionally, if not regularly, sold your goods more than once to the same storekeepers, and yet you cannot remember the names of any such customers in the three towns you have named, excepting the name of your own brother; is that so?

Ans. That is so.

Cross-Int. 19. And you also mean to state, do you, that you cannot remember the place where you first met with an article so superior to your own, as to prevent you making sales?

Ans. In Hartford, Conn.; the first paper I saw was there; that is, with the border.

Cross-Int. 20. I do not refer to the town in my Cross-Int. 19, but to the store, either by the name of the proprietor, or by the location where you first saw, or say you saw, this paper?

Ans. I can't tell the street; it was a little way from the depot. I can't tell the proprietor's name.

Cross Int. 21. How do you fix the date?

Ans. I was there both of those years; I won't say whether it was the first or second year.

Cross-Int. 22. How do you know that you were there those years?

Ans. I was with my brother in Norwich, Conn., those two years. I went from there to Providence, R. I.

Cross-Int. 23. But you are certain, are you, that the events you have described, took place in one or the other of the years you have named, and not sooner or later?

Ans. Yes, sir.

Cross-Int. 24. How long did you continue to sell fly-paper after 1878?

Ans. One year there in Connecticut; I sell it now, have sold it more or less up to the last season.

Cross-Int. 25. And from 1878 until recently, as I understand your testimony, you have not seen any sticky fly-paper with a sealing border, is that correct?

Ans. That is correct.

Cross-Int. 26. When did you see the fly-paper at Maplewood, Mass., to which you have referred?

Ans. I think it was a year ago last summer that I saw the first.

Cross-Int. 27. Who made it?

Ans. I can't say. I think it was some western firm that made it, I could not tell their names.

Cross-Int. 28. Did you at that time recall the similar paper which you say you saw in 1878 or 1879?

Ans. It had a border the same.

[*Adjourned to* 10 A. M. *Feb.* 24, 1892.]

FEB. 24, 10 A. M. *resumed.*

Cross-Int. 29. Your last answer did not respond to my interrogatory. Please answer the question directly.

[*Cross-Int.* 28 *read to witness.*]

Ans. Yes, sir; it did.

Cross-Int. 30. Did you speak of this paper which you say you saw in 1878 or 1879 to anybody at Maplewood upon the occasion upon

which you saw the sticky fly-paper with the sealing border at that place?

Ans. I did not.

Cross-Int. 31. How did you come to testify in this suit.

Ans. I have spoken of it in other places since then about seeing them. I was at Mr. Willson's to get some poison fly-paper, and then I saw some paper with a wax border and I said to Mr. Willson's son that I saw that paper in 1878 or 1879 in Connecticut, that I hadn't seen any since then, until a year ago last summer. I didn't know that Mr. Willson was making such fly-paper when I went there. I did not know either Mr. Willson or his son at that time when I went there. I had seen their poison paper with their name and number on the paper, on the poison fly-paper. I went there to get some to fill an order I had.

Cross-Int. 32. Your answer only tells me how you came to know Mr. Willson, please answer the question directly.

[*Cross-Int.* 31 *repeated.*]

Ans. By telling that I had seen it in 1878 or 1879?

Cross-Int. 33. Were you served with subpœna?

Ans. No, sir.

Cross-Int. 34. Then your appearance here is voluntary, is it?

Int. Yes, sir.

Cross-Int. 35. Who pays for your time?

Ans. Nobody pays for it. I pay for it myself.

Cross-Int. 36. Don't you get any witness fee?

Ans. No, sir.

Cross-Int. 37. You are aware, are you not, that the law allows you a reasonable fee for each day's attendance?

Ans. Yes, sir.

Cross-Int. 38. And you make that a present to the respondents in this suit?

Ans. I do.

Cross-Int. 39. You have every opportunity, do you not, to know what goes on in the fly-paper trade, by reason of your familiarity with that business, and your acquaintance with the makers of fly-paper, and dealers in it?

Ans. I can't say that I am acquainted personally with any man that makes fly-paper.

Cross-Int. 40. I do not refer to your personal acquaintance with these men, but with your business acquaintance, just as I may know a great many lawyers and judges, without having personal acquaintance with them. Please answer the question, stating whether you have generally been acquainted with what was going on in the trade.

Ans. To a small extent. I make my own fly-paper, and sell it. It don't give me a chance to get over very much of the world.

Cross-Int. 41. Do you think that if this sticky fly-paper, with wax border, had been on sale between 1879 and 1883, that you would have known it? Of course, I refer to sales in New England,—places near Boston or Providence?

Ans. I don't remember of ever hearing anything about it till I saw it in Maplewood; between those times I see none, or did not hear anything of it.

Cross-Int. 42. You would have been likely to hear of it if you had had to compete with it, as you did at Hartford, wouldn't you?

Ans. Yes; when anybody gets anything that suits them better they tell you of it when you try to sell them goods; they claim that the border paper is the best.

Cross-Int. 43. Have you had any consultation with respondents' attorney about this case before going on the stand?

Ans. I was at his office once.

Cross-Int. 44. What did you go there for?

Ans. To see him.

Cross-Int. 45. What about?

Ans. About signing a paper.

Cross-Int. 46. What was that paper?

Ans. Well, I can't tell you word for word what the paper was. The substance was that I had seen this paper in Hartford, Conn., 1878 or 1879. They read me the paper and I signed it. I was not in his office five minutes.

Cross-Int. 47. This paper which you signed was made out before you got there, then, was it not?

Ans. It was.

Direct Examination by MR. PERKINS.

Int. 48. In regard, Mr. Noyes, to the paper which you have spoken of as signing at 31 Cornhill, Boston, did you know and was you not told that that paper was an affidavit to be filed in behalf of the defendants, to be used at the hearing for a preliminary injunction in this case?

Ans. Yes, sir.

Int. 49. Have you any knowledge in any way that that affidavit was filed; that it was produced before the Court at the two hearings for a preliminary injunction; that it is now on file in the Circuit Court in this case, and that at the hearing for a preliminary injunction the Court never saw the affidavit; that it was not read before the Court for the reason that the Court said, on the complainants' own statement and arguments, that complainants had no case, and that it was unnecessary to read that, or any other affidavit.

[*Question is objected to by complainants' counsel as immaterial, as irrelevant, as impertinent to any matter or thing in issue by the bill and answer, and as not founded upon facts, no such language having been used by the Court, and as founded upon a state of facts not in evidence, even were they admitted to be facts, and as not within the knowledge of witness; and counsel moves to strike out the question, and any answer that may be given thereto upon all these grounds.*

Answer waived by respondents' counsel.]

Int. 50. Now, Mr. Noyes, please state whether the affidavit made by you, to which you have referred, is absolutely true in all its statements, and what was therein stated to be within your own personal knowledge actually was within your personal knowledge.

[*Question is objected to as immaterial, and as not direct examination, and as incompetent and leading, the witness having stated in his deposition his knowledge of the alleged facts.*]

Ans. It was.

MERRILL S. NOYES.

Attest: LOUIS GIRARDIN, *Notary Public, Special Examiner.*

DEPOSITION OF CHARLES H. JENKINS.

Direct Examination by JOHN McC. PERKINS, Esq., *of Counsel for Defendants.*

[*Complainants' counsel makes objection to the testimony of the witness, Charles H. Jenkins, the same as objected to in the deposition of William P. Clough.*]

Int. 1. What is your name, age, and residence?

Ans. Charles H. Jenkins; age, fifty-two; Cambridge, Mass.

Int. 2. State all you know about the history, first manufacture, and the different kinds of fly-paper, heretefore made and sold in the market or used in public.

[*Question is objected to as indefinite and immaterial.*]

Ans. In the year 1878, — months of May, June, or July,— Mr. Willson (John W. F. Willson, of Boston, Mass.) called at my place of business, Lowland Street, South Boston, and wanted me to do some machinist work for him, stating that he wanted to make a machine for the manufacture of fly-paper. I took him into my machine shop from the office, and introduced him to a man that I had working for me, told the man to go on and do what work Mr. Willson wanted, and as he wanted: he came there many times and had numerous trials of the machine there, and perfected it there: so that he turned out fly-paper as he wanted it, took the machine away, paid the bill. Don't know anything about the fly-paper business, but will state that when the machinist commenced work, he, Mr. Willson, showed him, the machinist, how he, Mr. Willson, had been producing fly-paper, and that he, Mr. Willson, wished to produce, with a machine that he proposed to build, the same effect that he had produced by hand.

[*Answer objected to, and moves to strike out same, as irresponsive and immaterial and impertinent to the issue.*

Defendants now and here offer to complainants to put in hereafter all objections of whatever nature and kind to any question or any answer, on behalf of the defendants; said objections to have precisely the same force and effect as if made by complainants' counsel and noted at the time, by the Special Examine appointed by the Court to take the

testimony in this case, provided that the counsel for the complainants will allow this examination to go on without such continual interruption and lengthening out the examination by his objections, when the questions and answers are given.

Complainants' counsel states upon the record, that he prefers to put his objections immediately with the objectionable matter, and that he has had no notice either by the notice of this commission or otherwise, that the present Examiner has been appointed by the Court to act in this case, and hereby renews and repeats his former objection.

The counsel for the defendants disclaims any responsibility for the ignorance of the counsel for the complainants, of the law, and of what the Court records in this particular suit plainly show on their face.]

Int. 3. How did you happen to know what Mr. Willson said to your machinist, and do you know what that particular kind of fly-paper was which Mr. Willson described to your machinist? If you do know please describe it in detail.

[*Objected to as calling for hearsay evidence.*]

Ans. I was present at the conversation that he had with the machinist. Fly-paper with a sticky center and border. I have described it.

[*Objected to as hearsay and incompetent.*]

Int. 4. Was the border less sticky or more sticky than the matter in the central part of the fly-paper?

[*Objected to as leading.*]

Ans. I should say that the border was less sticky than the center.

Int. 5. Did the border extend all around the sticky matter in the center of the fly-paper?

[*Objected to as leading.*]

Ans. It did.

Int. 6. Do you know for what use or purpose this border was used?

Ans. No, I did not know at the time; have heard conversations about it since.

Int. 7. Do you know whether or not Mr. John W. F. Willson, by himself, or in connection with others, used this machine to manufacture fly-paper, with a sticky center and a harder border all

around it, subsequently to the time when you made for him this machine in May, June, or July, 1878, and if you did so know, about for how long a time did Mr. Willson use this machine for this purpose, after its completion in 1878?

[*Objected to as leading.*]

Ans. No, I don't know whether he used it or not.

Int. 8. Do you know whether or not this sticky fly-paper with a hard border was in public use or on sale in 1878, or subsequently? If so, please state in detail all you know about it.

[*Objected to as incompetent and leading, witness having already stated that he don't know anything about the fly-paper business.*]

Ans. I don't know anything about it.

Int. 9. Have you stated all you know about the sale and manufacture of sticky fly-paper with a hard border, in 1878, or thereabouts, and if you have not so stated please do so now?

Ans. I know that in the building of this machine there were numerous trials or tests, made at my factory, before the thing was perfected, that's all.

Int. 10. What do you mean by the words, before the thing was perfected, and to what does the word "it" refer: to the machine, to the manufacture, or to the process of manufacture?

Ans. It refers to the machine.

Int. 11. Did you ever see any fly-paper produced by this machine after the machine was perfected in 1878? And, if so, please describe that fly-paper.

[*Objected to, as improper, witness having in his answer to Int. 7 stated that he did not know whether the machine was used or not.*]

Ans. None, but that produced at the factory at that time, during these trials or tests, they used a manilla paper which I had in the factory, and the result was that the sticky substance would penetrate this paper, and of course would be worthless; paper was not prepared for it, but it answered to illustrate what the machine would produce.

Int. 12. Please examine the exhibit marked "Clough A", wherein the fly-paper manufactured by Willson in 1878 differed from the two sheets which are here placed together.

[*Objected to as leading and incompetent, and proper for an expert.*]

Ans. It differed in the size, and the quality, that is all the difference.

Cross Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Cross-Int. 13. In what class of business were you engaged in May, June, and July, in 1878?

Ans. In the manufacture of glass.

Cross-Int. 14. Who were your partners in that business?

Ans. One partner, Lorenzo Hodsdon.

Cross-Int. 15. Of what part of the business did you have charge?

Ans. The manufacturing.

Cross-Int. 16. Who kept the books of account in your business?

Ans. At that time I could not say who was the bookkeeper. The books were kept in the office in Milk Street.

Cross-Int. 17. How did you keep account of the amount of Mr. Willson's bill.

Ans. Probably as all other accounts were kept, sent over on what we used to call "way bill".

Cross-Int. 18. What was the firm name?

Ans. Suffolk Glass Company.

Cross-Int. 19. And this account of Mr. Willson's was a firm transaction, was it not?

Ans. Yes, sir.

Cross-Int. 20. And therefore should be found upon the books of that date, is that so?

Ans. Yes.

Cross-Int. 21. Have you examined those books to find out what was the date of these transactions.

Ans. No; never looked into the books in my life.

Cross-Int 22. Please sketch upon the record the machine which you say was made at the shop of the Suffolk Glass Company in 1878.

Ans. I could not sketch it.

Cross-Int. 23. Please describe its construction in such way as to make it clear to the Court how it was made and operated.

Ans. Well, it set up on a frame, four rollers, those rollers I think were of wood, as near as I can recollect, and underneath those rollers were two pans, through which the paper ran and took up this sticky and border. I should think the machine may have been perhaps thirty inches long and possibly eighteen inches from outside to outside. I did not build this machine, I only superintended it.

Cross-Int. 24. About how large were the rollers to which you refer?

Ans. I think they may have been six inches in diameter.

Cross-Int. 25. What was their length?

Ans. Possibly nine inches long.

Cross-Int. 26. How were they driven?

Ans. By hand power, geared.

Cross-Int. 27. Explain what you mean by geared, do you mean the rollers were geared together so that as you turned one the other would turn also?

Ans. Yes, sir.

Cross-Int. 28. Was that true of both sets of rollers?

Ans. Yes.

Cross-Int. 29. Were the two sets of rollers also geared together so that the four rollers moved as one, or did they move in two separate sets?

Ans. The two sets were geared together.

Cross-Int. 30. And as I understand your description, the paper ran through tin pans containing the sticky substance and the border, did it not?

Ans. Yes.

Cross-Int. 31. In your answer to Int. 5, you state that the border extended all around the sticky substance, in the center of the fly-paper, that is correct, is it not?

Ans. Yes.

Cross-Int. 32. And this fly-paper which you saw made was made in your presence, and you observed that effect of the operation of this machine, did you?

Ans. Well, I see it in various stages in the different trials; many cases the border would be broken, not full; ultimately the result of the machine turned out the paper with the border all around it. I won't say that I was there, when the trials were consummated, that is to say, when the last trials were made; I was probably in the building.

Cross-Int. 33. What was the name of the man who built the machine?

Ans. John Campbell, of Boston.

Cross-Int. 34. Do you know where he lives?

Ans. I think he lives in South Boston; he did at that time.

Cross-Int. 35. How long did it take him to finish the machine?

Ans. Perhaps two or three days.

Cross-Int. 36. How much was the bill?

Ans. Don't recollect.

Cross-Int. 37. But you recollect the payment, do you not?

Ans. No.

Cross-Int. 38. Then what do you mean by your answer to Int. 2, when you state, that Mr. Willson "took the machine away, paid the bill"?

Ans. I don't recollect that I stated that. Mr. Willson took the machine away, the bill would not have been paid to me, probably not, it would go the course of all bills, probably delivered by our team. I do not recollect the circumstances.

Cross-Int. 39. The examiner will please read to witness the portion of his answer to Int. 2, to which counsel has referred.

[*Cross-Int.* 38 *repeated.*]

Ans. I did not make that statement, I don't say that Mr. Willson took the machine away, I don't make that statement, I don't know who took it away, it was probably delivered by our team.

Cross-Int. 40. Is your recollection of what took place fifteen years ago as accurate as your recollection of your answers to Ints. propounded this morning?

Ans. I recollect when that machine was tried there in the months of May, June or July, 1878.

Cross-Int. 41. Was the sticky substance in these trials in the same pan with the substance used for the border?

Ans. No.

Cross-Int. 42. What was the shape of the pans?

Ans. Trough shaped.

Cross-Int. 43. And the paper ran between the rollers, did it?

Ans. Yes.

Cross-Int. 44. Before and after going through these pans, did the paper pass through the rollers?

Ans. The substance was applied to the paper from these rolls; the paper passed through the rolls.

Cross-Int. 45. Then what do you mean by your answer to Cross-Int. 23, wherein you state that "underneath those rollers were two pans through, which the paper ran and took up this sticky and border"?

Ans. I should have said the rollers took it up.

Cross-Int. 46. How did the roller apply the border?

Ans. The border, I presume, the same as the sticky; I can't explain it.

[*Counsel for complainants moves to strike out the entire deposition of this witness; the machine by him described being incapable of the mode of operation ascribed to it, and being, if built according to that description, inoperative, and no answer to the claim and the Letters Patent in suit; and further as revealing, if made as described, a mere abandoned experiment; and further upon the ground that the witness's recollection is, by his own statements, so confused and contradictory, as to make him unworthy of credit.*]

Cross-Int. 47. What means were used to keep the sticky material and the border soft, so that they would flow?

Ans. The material was heated up in a steam both close by, and dipped out, put into these tin pans.

Cross-Int. 48. Do you recollect the drawing contained in the Letters Patent to Otto Thum, No. 305,118, granted Sept. 16, 1884?

Ans. Mr. Willson showed me a drawing. I presume that was it. I could not describe it.

Cross-Int. 49. Are you the same Charles H. Jenkins who, upon Nov. 12, 1891, signed an affidavit to be used by respondents in this cause?

Ans. I signed an affidavit.

Cross-Int. 50. [*Cross-Int.* 49 *repeated.*]

Ans. I don't recollect the date but I did make an affidavit to be used in this cause; don't recollect the date.

Cross-Int. 51. But you are the same man, — you are identical with that Chas. H. Jenkins?

Ans. Yes.

Cross-Int. 52. In that affidavit I find these words, "a machine for the purpose of spreading sticky fly-paper substantially like the one described in the patent papers of Otto Thum, of Grand Rapids, Mich., and was present at the experiments for the production of sticky fly-paper with the wax border or margin, under the direction of J. W. F. Willson at that time, who was the originator of the machine". If you are not certain what was in the patent paper of Otto Thum and do not know that the drawing shown you was the drawing in that patent, how can you make that statement?

Ans. I was shown a drawing by J. W. F. Willson, purporting to be a drawing of the patent of Otto Thum. I won't say that I read it, or that there was Otto Thum on it, but from that drawing, and general appearance of the one built at my factory for Mr. Willson, near as I should judge from the position of the rolls, I should say it might p oduce the same effect.

Cross-Int. 53. You would think, would you, that that machine would also spread the sticky substance and the border in the same way as the machine which you constructed for Mr. Willson?

Ans. I should think it might.

Cross-Int. 54. Did you ever see Mr. Willson sell any of this paper with the wax border after he took that machine away from your factory, or after it was taken away by whoever did take it in 1878?

Ans. No.

Cross-Int. 55. And this also agrees with what you say in your answer to Ints. 7 and 8, does it not?

[*Answers read to witness of Int.* 7 *and* 8.]

Ans. Yes, I suppose it does.

Cross-Int. 56. In your affidavit to which I have already referred, you say "I can testify that I saw sticky fly-paper with a wax border or margin at that time, and that it was manufactured and

sold by the said J. W. F. Willson, as early as 1878". How do you reconcile these two statements?

Ans. I can't say as to the sale part, but that it was made at the factory; I never knew of a sheet being sold. I suppose if he manufactured it he sold it, and in swearing to the affidavit I did not intend to say that I saw any paper sold.

Cross-Int. 57. Do you generally sign papers swearing away people's rights without reading them and knowing their contents?

Ans. No, sir.

Cross-Int. 58. Then this affidavit is the exception, is it?

Ans. Yes.

Cross-Int. 59. What is your present occupation?

Ans. I am a broker, selling notes, stocks, and real estate.

Cross-Ans. 60. How long since?

Ans Five years, about five years.

Cross-Int. 61. Ever since you left the glass business?

Ans. Yes, I think it was.

Cross-Int. 62. Don't you know?

Ans. Yes.

Cross-Int. 63. And that is a fact, is it, that you have been a broker since about 1886, or 1887, and that before and up to that time you were in the glass business?

Ans. I was in glass business and real estate.

Cross-Int. 64. Who pays your witness fees?

Ans. I have not had any yet.

Cross-Int. 65. Do you expect to have them?

Ans. I do.

Cross-Int. 66. Have you been subpœnaed, or do you appear voluntarily?

Ans. Appear voluntarily.

CHAS. H. JENKINS.

Attest: LOUIS GIRARDIN, *Notary Public, Special Examiner.*

DEPOSITION OF ALBERT C. SMITH.

Direct Examination by JOHN McC. PERKINS, Esq., *of Counsel for Defendants.*

BOSTON, Feb. 25, 1892.

[*Complainants' counsel makes the same objections as to the deposition of William P. Clough.*]

Int. 1. What is your name, age and residence?

Ans. Albert C. Smith; age, forty-six; Boston.

Int. 2. What is your business?

Ans. Wholesale druggist.

Int. 3. How long have you been engaged in the drug business?

Ans. As clerk and employer, over thirty years.

Int. 4. Have you ever bought and sold fly-paper during that period, and, if so, please state the different kinds of fly-paper which you have handled, when, or about when you first bought and sold it, and further, tell what you know about its public sale and use.

[*Objected to as immaterial, indefinite, and counsel moves to strike out the question, and any answer that may be given thereto, for want of notice in the answer as to the previous use and sale, supposed to be proved thereby.*]

Ans. I have bought and sold fly-paper, — of course this is a matter of memory. I could only state the leading kinds. The first fly-paper which I remember as being introduced to the public, was the German paper, a coarse paper saturated with poison and dried, and its method of using was to cut it up and use it by moisture, and put it in plates. The next fly-paper that I recollect of the trade selling was the sticky fly-paper, prepared by two parties, Mr. Willson, of South Boston, Mr. Foster, of Concord, N. H. Mr. Willson's had the larger sale. I should say as a matter of memory, and absolute certainty, that the sticky fly-paper was sold in 1870, and possibly before that time. I could not state, we handle so many things. It had a large and constantly increasing sale. It caught the flies so much quicker, that it was preferred by the trade to the old-fashioned, poisonous kind.

[*Answer objected to as impertinent to the issue and not disclosing any anticipation of the Letters Patent in suit.*]

Int. 5. Please give the full name of the Mr. Willson, of South Boston, to which you referred.

Ans. John W. F. Willson.

Int. 6. Please describe the kind of fly-paper which you bought of him.

Ans. The first fly-paper which Mr. Willson put upon the market was sticky fly-paper. I want to qualify it by describing the sticky fly-paper, because there was two kinds he put up, you know, one being the paper heretofore mentioned, being the poison fly-paper which was dry. What I am going to describe now is the sticky fly-paper. This was spread on sheets of white paper a little larger than the commercial letter paper. Upon this paper was placed a sticky substance spread nearly to the edge. The sheets were then folded, and then placed in boxes. The paper thus put up had a steady and continuous sale, but complaints arose from customers that at times, particularly in very warm weather, the material used in spreading it would run over the edges, and make the various sheets stick together, so that customers, in taking a single sheet from the box, would find it adhering to the remaining sheets, and frequently tear it. I remember myself of hearing these complaints so often, that I told Mr. Willson that he had to obviate this trouble, or else see his business very largely decline. Mr. Willson said he would give the matter some thought, and see if the trouble could be remedied. He later on presented,— in the year 1878, it was, — he presented a new fly-paper which was the same old fly-paper spread as before, with the exception that he had, upon the border of the paper, a wax surface, which would prevent the sticky material from running out and bothering the trade as the old fly-paper had done. This change was very acceptable to all the trade, and the demand increased for this class of goods. Mr. Willson continued this style of putting up for two years, but he was unable to supply it in this form as fast as the trade wanted it, and he resumed the former style of putting up the fly-paper.

[*Answer objected to upon the same grounds, and as irresponsive.*]

Int. 7. Describe the way in which John W. F. Willson put up this

fly-paper which you have described as having a sticky central portion, with a wax border, that is to say, how were the sheets placed together, and about how large or about how many sheets, were placed in the usual packages, when sold to the wholesale trade? I mean by this question to ask you to state whether the sheets of fly-paper were placed, so that the sticky sides faced each other, or whether the sheets were placed one over the other, so that the sticky side of one sheet would be presented to the back side of another sheet, and so when the sheets were broken apart the sticky matter would necessarily be on both sides of the same sheet.

[*Objected to as leading.*]

Ans. The paper as put up by Mr. Willson was spread upon sheets of white paper, the center of which somewhat resembled liquid glue. Around the edges of the paper was placed this wax border, the object of which was to prevent the sticky material from flowing to the edges, which, if it had done, would have necessarily made this paper of no more value to the trade than the lot originally put up. This paper was placed in boxes, paste board boxes, I think, with the sticky sides facing each other, so that it could be easily pulled apart, and always ready for use; regarding the number of sheets in a box, I think it was fifty.

[*Answer objected to upon the grounds heretofore stated, and counsel again moves to strike out.*]

Int. 8. Please examine the exhibit marked "Clough A", which I now hand you, and state in what way, if any, the sticky fly-paper with a wax border which John W. F. Willson sold you in 1878, differs from the two sheets of fly-paper shown by this exhibit.

[*Objected to as leading, and as assuming a state of facts, not in evidence.*]

Ans. The border don't seem to be as hard; what we sold could readily be pulled apart.

Int. 9. Do you note any other difference between this exhibit and the fly-paper which you bought of John W. F. Willson in 1878, excepting that which you bought of Mr. Willson in 1878 could be more readily pulled apart than can these two sheets of fly-paper shown by this exhibit? I do not refer by this question to the quality, size or fibre of the paper in any way, but only to its two impor-

tant characteristics as a fly-paper. Namely, a sticky central part with a wax border for the purposes which you have already described.

[*Question objected to as leading.*]

Ans. If I understand your question correctly, what you wish to know is, if this fly-paper which I hold, marked "Clough A", is the same as sold by Mr. Willson, in the year 1878. My answer to this would be, that it does not pull apart with that ease and rapidity which was the case with the fly-paper we sold; as far as the interior or sticky substance is concerned, I should say it was substantially the same. I think I have answered all the points if I remember correctly.

Cross Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants, de bene esse only, subject to all former objections.*

Cross-Int. 10. State location of your present place of business.

Ans. No. 26 Tremont Street, under the Museum.

Cross-Int. 11. How are you enabled to fix the date of the alleged change in the character of sticky fly-paper sold by you, as stated in your testimony?

Ans. That year my grandmother passed away, and I had occasion to visit her during her last illness, and among other things that I took to her for her comfort and sustenance, was some of this very fly-paper which I mentioned. I remember it particularly in connection with this matter; it was the first lot Mr. Willson put up. I was very anxious to try it myself to see if it worked all right.

Cross-Int. 12. And that is the only way, is it, that you can fix that date?

Ans. I remember it particularly in connection with that circumstance, which was one that I would remember.

Cross-Int. 13. You say you visited your grandmother; do you mean to say that she was not a resident of Boston?

Ans. I do.

Cross-Int. 14. Where did she live at the time of her last illness?

Ans. Boston.

Cross-Int. 15. Of what place was she a resident at the time of your visit?

Ans. Litchfield, New Hampshire.

Cross-Int. 16. And I understand you to say that she died in Boston?

Ans. Yes, sir.

Cross-Int. 17. Do you recall the exact date of her death?

Ans. I think it was the month of November, 1878.

Cross-Int. 18. Where was she buried?

Ans. At Mt. Hope Cemetery, at Boston.

Cross-Int. 19. What time of the year was it when you paid your visit to her at Litchfield?

Ans. I think it was in June or July.

Cross-Int. 20. Please state the full name of your grandmother.

Ans. Isabella Smith.

Cross-Int. 21. During her last illness was she at your house?

Ans. Yes, sir.

Cross-Int. 22. What was the name of her physician?

Ans. I think it was Dr. A. I. Fenn. His residence was on Cambridge Street, Boston. I think he is now dead.

Cross-Int. 23. Do you have any entries in your books of account, which will enable you to fix the date of this change to which you have referred?

Ans. I should say not; because the paper came billed as so many boxes of fly-paper, and then our order on our sales book reads "One box sticky fly-paper". It would not specify the particular kind. That is all I can say in regard to it.

Cross-Int 24. Have you recently examined your books to find out whether there were such entries or not?

Ans. I have not?

Cross-Int. 25. Have you had any conversation with respondents' attorney, or with Mr. Willson, as to these matters before going on the stand?

Ans. Not with Mr. Perkins. Mr. Willson simply asked me if I would hold myself in readiness to come when wanted and testify what I knew in regard to it.

Cross-Int. 26. Did you at the time of that conversation tell Mr. Willson your recollection of this date, or did Mr. Willson in any way consult with you, as to the date, or was there any understand-

ing between you as to your recollection of the facts to which you have testified, or as to the nature of the testimony which you would give when called in pursuance of the agreement you have referred to in your answer to Cross-Int. 25?

Ans. No, sir. Mr. Willson, as I stated before, asked me to hold myself in readiness when wanted in regard to this fly-paper case, that was all in substance.

Cross-Int 27. When did this conversation occur?

Ans. Well, you refer to conversation with Mr. Willson, — I should say about a month ago.

Cross-Int. 28. That was the first conversation you had with him on the subject, was it?

Ans. Yes, sir.

Cross-Int. 29. How did you know about this case?

Ans. A month ago Mr. Willson told me there was some litigation in regard to this paper and asked me to come up and tell what I knew about it when the time came.

Cross-Int. 30. Have you ever been in Mr. Willson's factory?

Ans. No, sir. I could not tell whether it is in Washington Street, Tremont Street or Neponset. I have not the slightest idea.

[*Noon recess.*]

[*Witness wishes to correct an error in his answer to Cross-Int.* 20, *as follows:*]

The WITNESS. The name of my grandmother that I referred to was Mary Pottle, instead of Isabella Smith. I gave the name of my paternal grandmother instead of my maternal grandmother. The burial place of Mary Pottle is in Cedar Grove Cemetery, in Boston, the exact date of death March 1, 1884, and physician Dr. Edward De La Granja, 265 Shawmut Avenue.

[*Counsel for complainants states upon the record that, in view of this statement of witness, he has no further cross interrogatories to propound.*]

ALBERT C. SMITH.

Attest: LOUIS GIRARDIN, *Notary Public, Special Examiner.*

BOSTON, Feb. 25, 1892.

Complainants' counsel objects to all the evidence so far adduced, based on exhibits not offered in evidence, and moves to strike out the same.

[*Adjourned.*]

February 26, 1892.

Commission met pursuant to adjournment, and at the request of counsel for respondents, adjourned to March 7, 1892, at 10 A. M.

Attest: LOUIS GIRARDIN, *Notary Public, Special Examiner.*

DEPOSITION OF JOSEPH B. SHARLAND.

Direct Examination by JOHN MCPERKINS, Esq., *of Counsel for Defendants.*

BOSTON, March 8, 1892.

[*Complainants' counsel makes the same objection to the deposition of this witness, as to the deposition of W. P. Clough.*]

Int. 1. State your name, age and residence.

Ans. Joseph B. Sharland: fifty-four: 59 Crawford Street, Boston.

Int. 2. Do you know anything about the manufacture, public use or sale of fly-paper, and, if so, state what you know about any particular kind or kinds of fly-paper, so used.

[*Objected to as irrelevant and indefinite.*]

Ans. All I know about fly-paper in a general sense is from my acquaintance with Mr. John W. F. Willson, and his association with the manufacture of fly-paper. First I saw of it was shown me by Mr. Willson; the last I saw was shown me by him at this time, he claiming that he had an improvement. I purchased it from time to time, using it in my family as a convenience. I know very little as to the extent of business in this article except from my observation, it seems to be in very general use. As far as I remember it, it was a sticky paper. It seemed to me to be simply spread on paper to get the sticky principle to which the insects adhered. Since then I have seen and used paper that seemed to be dry, not so sticky, but it produced the same effect upon

the insects: it killed them. Mr. Willson, in his claimed improvement, showed me a paper with a margin which was supposed to have the advantage of preventing the sticky part on the paper from melting, or running, this margin being of a waxy nature. I don't know what the wax was. I don't know the material; it was of a waxy nature.

Int. 3. Give the date when Mr. Willson first showed you the fly-paper of which you have spoken.

Ans. First of it that I saw was when I was living in Hanson Street after leaving South Boston. I should think it must have been about 1863 or 1864.

Int. 4. When did Mr. Willson show you the fly-paper with a waxy margin of which you have spoken?

Ans. That must have been somewhere from 1877 to 1879.

Int. 5. When did Mr. Willson last show you the fly-paper which you have spoken of as having some improvement, and particularly describe what that improvement was, and what advantages were claimed for it?

Ans. From long association with Mr. Willson I was in the habit of frequently calling upon him, and being friends, he has naturally mentioned matters of interest, and I recall the mention of this paper the first time through consulting him in regard to illness in my family; this was about the time of my moving to Jamaica Plain; this fixes the matter somewhat in my memory. All the advantage claimed, as far as I can remember was, that the wax on the margin prevented the running of the sticky portion or middle portion of the paper. In the early part of my life I had some experience with the apothecary business, and was called upon to spread plasters, so that I could readily understand the advantage claimed. As near as I can remember I moved to Hanson Street about the year 1862; I lived there sixteen years. I moved to Jamaica Plain in 1877 or 1878, as near as I can remember.

Int. 6. Do I understand you, then, as saying that Mr. Willson showed you his sticky fly-paper, with a wax border, such as you have described, at about the year 1878?

[*Objected to as leading.*]

Ans. Yes, sir.

Int. 7. Did you ever buy, sell, or use, that sticky fly-paper with a wax border, or know of its being an article of merchandise, and, if so, state at what date, or about what date, you first knew of its manufacture, sale or use?

[*Objected to as leading.*]

Ans. I have used it myself, I have bought it of Mr. Willson, never sold it, never engaged in the business at all; first I remember of his showing me the paper with the wax border I have described, was at the time previously stated. I don't remember the date of the purchase.

Int. 8. Can you tell in what year you first purchased of Mr. Willson this fly-paper with a wax border?

[*Objected to, witness having already stated his recollection.*]

Ans. I think it was along in the year 1878; it was about the time he showed it to me; he first gave me two or three sheets to try; I wanted some more; if I remember rightly it was given me first before the fly season had fully come in, and it lay around the house for a while, using it when occasion required; so my purchase must have been made some time after.

Cross Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Cross-Int. 9. Do you remember whether or not you saw this fly-paper with a wax border, such as you have described, before you moved to Jamaica Plain?

Ans. It was about that time. I can't remember whether it was the last part of one residence, or the first part of another. I should think it was at the last part of the former residence in Hanson Street.

Cross-Int. 10. You say you remember these sample sheets which Mr. Willson gave you, lying around the house; in what rooms did they lie?

Ans. I don't know the rooms they were in; I only know I took them home, and had no occasion to use them for a time.

Cross-Int. 11. Can you not state positively, what year you removed to Jamaica Plain?

Ans. Not more positively than I have already.

Cross-Int. 12. Do you remember the appearance of your two houses, — the one in Hanson Street and the one in Jamaica Plain?

Ans. The one in Hanson Street was a brick house; the one in Jamaica Plain was a wooden frame house. I do remember them.

Cross-Int. 13. Now, can you not remember the one of those houses to which you took those sample sheets, of which you have spoken?

Ans. I cannot accurately, but I am of the impression that it was the one in Hanson Street.

Cross-Int. 14. What was the number of the house in Hanson Street.

Ans. No. 25.

Cross-Int. 15. Please give the location of the house you occupied in Jamaica Plain.

Ans. House was on Centre Street; left side going out; back from the street. I think Centre Street ran about south and west.

Cross-Int. 16. Between what streets was it situated?

Ans. I can't tell. I really don't remember; not far from Pond Street.

Cross-Int. 17. Beyond Pond Street, or this side?

Ans. This side, before you get to it.

Cross-Int. 18. How long did you live there?

Ans. I lived there fully three years.

Cross-Int. 19. Do you remember the number of the house?

Ans. There was no number to it.

Cross-Int. 20. What is your present occupation?

Ans. Real estate. I deal in real estate for myself. I have enough of it to occupy me entirely.

Cross-Int. 21. How did you happen to have experience in the drug trade?

Ans. As a boy, I was placed in that business by my father. I was a young man just leaving school.

Cross-Int. 22. To whom were you apprenticed?

Ans. To White & Ferguson, corner of Hayward Place and Washington Street.

Cross-Int. 23. Is the firm still in existence?

Ans. No, it is not; to my knowledge it is not.

Cross-Int. 24. Do you remember how old you were at that time, and how long you staid there? If so please state it.

Ans. I was about sixteen years old when I went there, was there two years or more.

Cross-Int. 25. Then you left there about 1856?

Ans. I should say about 1855 or 1856.

Cross-Int. 26. What did you do after you left there?

Ans. I went into the office of (I think it was) G. D. Whetmore, on Washington Street, just this side of Chickering's factory. I don't remember the number of it.

Cross-Int. 27. In what business were they engaged?

Ans. Upholsterers.

Cross-Int. 28. How long were you there?

Ans. I did not stay there long, I can't remember how long,—short time.

Cross-Int. 29. What was you next business?

Ans. I went into Chickering's piano factory with my father.

Cross-Int. 30. How long did you stay there?

Ans. Several years. I was of age when I left there.

Cross-Int. 31. What did you do next?

Ans. Entered the musical profession.

Cross-Int. 32. When did you first know Mr. Willson?

Ans. From thirty to thirty-five years ago — fully that.

Cross-Int. 33. And you have been friends ever since?

Ans. No excessive friendship; we thought well of each other; more or less associated in a musical way; never in business way.

Cross-Int. 34. I understand that while you were in the drug business you frequently spread plasters.

Ans. Yes; I have frequently spread plasters.

Cross-Int. 35. What was their consistency?

Ans. The body was an adhesive plaster, and there was a medication of the same, the ingredients I knew nothing about; that is as near as I can explain it. I was only an apprentice; we made plasters with a border at that time. The border was made by fastening a paper frame around the edge of the sheep skin that we spread the plaster on, then the center was filled in, with whatever the physician prescribed.

Cross-Int. 36. I refer, in my question, to the consistency of the material used for the plaster, whether it was thick or thin, whether it was liable to run or not.

Ans. Some ingredients were more liable to run than others; the apothecary endeavored to make it hard enough to require very little warming on application; in some instances the natural heat of the body was sufficient to cause it to adhere. Can't explain it better than that.

Cross-Int. 37. Were the plasters soft enough to run when put on the body?

Ans. Not intended that they would be.

Cross-Int. 38. When a plaster was sufficiently adhesive to keep its place on the body, it was not your custom to put a border around it, was it?

Ans. I always considered the border as a convenience in handling. I did not consider the border so much as a protection from running, as a convenience in handling it.

Cross-Int. 39. How do you know that Mr. Willson made the fly-paper which you say you bought from him in 1878?

Ans. He told me he made it. I knew he was making it; he was in the business; frequently saw him working on fly-paper.

[*Noon recess.*]

Cross-Int. 40. Were you ever in Mr. Willson's factory?

Ans. Yes, sir; a great many times.

Cross-Int. 41. Did you ever see there a machine for the manufacture of this sticky fly-paper, with a wax border, which put on the sticky substance and the wax border?

Ans. I never saw that machine in working order.

Cross-Int. 42. Were you there in the summer of 1878?

Ans. I must have been there, probably more than once. I was in the habit of calling in almost every time I went to South Boston; most of time went no further than the store; in summer I was less likely to call often than at any other season of the year, since in summer I took a vacation.

Cross-Int. 43. And you were also probably there in 1879, were you not?

Ans. Yes, I was probably there, more or less, in 1879.

Cross-Int. 44. And Mr. Willson often spoke to you of matters of interest in his business?

Ans. Mr. Willson frequently mentioned something in which he was interested for the time; he knew I had no particular interest in the manufacture, except a friendly one.

J. B. SHARLAND.

Attest: LOUIS GIRARDIN, *Notary Public, Special Examiner.*

DEPOSITION OF BENJAMIN E. CORLEW.

Direct Examination by JOHN McC. PERKINS, Esq., *of Counsel for Defendants.*

MARCH 9, 1892.

[*Counsel for complainants objects to the taking of the deposition, on the same grounds of his objections noted in the deposition of W. P. Clough, and counsel for complainants agrees that respondents may have further time in which to take testimony in this case, should same be required.*]

Int. 1. State your name, age, and place of residence.

Ans. Benjamin E. Corlew; age, sixty-one; Brookline, Mass.

Int. 2. Do you know anything about fly-paper manufactured and sold by John W. F. Willson, of South Boston, and, if so, please tell what you know about it, describing the same, when and where you first saw it, stating further what you know about its public sale and use?

[*Objected to as leading and indefinite.*]

Ans. I know that I was at his store at one time and he called my attention to a fly-paper which he said he was manufacturing; at this interview Mr. Willson wanted to know if I did not want some, I told him I did not think I did, or words to that effect. I asked him if it was any better or different from any other fly-paper, he said it was from the fact of his having placed a border around it of wax, that would prevent the sticky substance in the center from running. It

was in the year 1878. This interview was in 1878. I know nothing about its public sale or use.

[*Answer objected to as hearsay.*]

Int. 3. Did you see this sticky fly-paper with a wax border, which you have just described, at Mr. Willson's place of business or elsewhere at this interview in 1878, and did you see this fly-paper more than once in 1878?

[*Objected to as leading and as improper, the witness having stated his knowledge of the facts.*]

Ans. I saw it in 1878, at Mr. Willson's store, I don't remember whether I saw it more than once or not.

Cross Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Cross-Int. 4. Mr. Corlew, how do you happen to remember this visit to Mr. Willson and its details so accurately after the lapse of fifteen years or so?

Ans. From the fact that for a number of years previous to 1878, my wife had been suffering with a very severe attack of eczema, and during the spring and early fall of 1878, Mr. Willson cured it entirely.

Cross-Int. 5. How does that fix it?

Ans. From the fact that that was the date and time that he cured it, and she has had no return of it since.

Cross-Int. 6. What did that have to do with your visits to Mr. Willson's place?

Ans. It was at one of my visits to his store for the ointment that the interview with Mr. Willson, relative to the fly-paper, was had.

Cross-Int. 7. How do you happen to remember that this occurred in 1878?

Ans. I remember distinctly that it occurred, as I have stated in my previous answer, in 1878, as I have had occasion to go to his store but very seldom since.

Cross-Int. 8. Have you had any conversation with Mr. Willson about this matter, before going on the stand?

Ans. I have. I met Mr. Willson a day or two ago, and he

wanted to know if I remembered about his manufacturing fly-paper with a border. I told him I did; he wanted to know if I would give my testimony to that effect. I told him I would. I told him I had but a general idea, but I would tell what little I did know; he said he would send me a postal card when and where to meet him, and in response to that postal card I came here yesterday.

Cross-Int. 9. Did Mr. Willson agree with you that the date of the transaction was as you have said, or did he differ from you?

Ans. I don't think at that interview, a few days ago, with Mr. Willson, there was anything said about a date I have thought the matter over since then and located the date and transaction as I have stated.

Cross-Int. 10. Was that the only interview you had with Mr. Willson about the matter?

Ans. Yes, sir.

Cross-Int. 11. Did not Mr. Willson at that time say to you, "that was in 1878, wasn't it", or "don't you remember that that occurred in 1878"?

Ans. I don't think he did.

Cross-Int. 12. Don't you remember what he said?

Ans. I have stated all, or about all of the conversation that I had relative to the matter. I saw him but three or four minutes at the time; met him on the street.

Cross-Int. 13. And during that three or four minutes no such expression, as I have named, occurred?

Ans. I feel quite positive there was none.

Cross-Int. 14. And you went on the stand without any one knowing what you were going to swear to before you took your place, is that a fact?

Ans. No, sir, I told him yesterday here in the office about what I remembered, which is about as I have testified here, and he said that is all right, just what I want, or words to that effect.

Cross-Int. 15. Then what do you mean by your answer to Cross-Int. 10? [*Int. and answer read to witness.*]

Ans. I took it that that question meant previous to be summoned here.

Cross-Int. 16. You have not been summoned, have you? Do you not appear voluntarily?

Ans. Perhaps I have used the wrong word, I came as I told Mr. Willson I would, at his request by postal card.

Cross-Int. 17. And in your consultation yesterday you decided upon this date, did you?

Ans I decided upon this date previous to coming here, being positive of the fact.

Cross-Int. 18. What is your present business?

Ans. I keep a boarding house.

Cross-Int. 19. How long have you been in that business?

Ans. Nearly all the time since the war.

Cross-Int. 20. What do you mean by nearly all the time?

Ans. I think there have been one or two years, or parts of years, that I did not keep boarders.

Cross-Int. 21. What did you do during those one or two periods?

Ans. In the winter, I think, of 1871 and 1872 I had a provision store in Somerville, Mass., and, now I remember, the winter of 1870 and 1871 I had a grocery store in Chelsea, Mass.

Cross-Int. 22. How did you happen to go to see Mr. Willson in 1878?

Ans. I went there for ointment for my wife's arm.

Cross-Int. 23. How did you happen to go there, and not to a physician, or to a drug store?

Ans. I had been doctoring my wife's arm by physicians in New Jersey, Chicago, and Boston, and at one time Mr. Potter, of Weeks & Potter, guaranteed to cure with "Cuticura" or forfeit the whole contents of his store; we used a great number of boxes of the cuticura, and it did no good; at one time I happened to go into Mr. Willson's drug store, and mentioned the above facts; he said he could cure it; I had no faith or the least idea that he could, but after using three or four boxes of ointment, the arm became perfectly well and has been ever since.

Cross-Int. 24. Did you know Mr. Willson before that time?

Ans. I had.

Cross-Int. 25. Did you buy any of this sticky fly-paper from Mr. Willson?

Ans. No, sir.

Cross-Int. 26. And as I understand, you cannot say how effective this improvement was?

Ans. I cannot.

Cross-Int. 27. How often did you see Mr. Willson make this paper?

Ans. I never saw him make it.

[*Counsel for complainants moves to suppress the deposition of this witness as hearsay and incompetent, and as indefinite, immaterial and irrelevant.*]

BENJ. E. CORLEW.

Attest: LOUIS GIRARDIN, *Notary Public, Special Examiner.*

DEPOSITION OF JOHN W. F. WILLSON.

Direct Examination by JOHN McC. PERKINS, Esq., *of Counsel for Defendants.*

BOSTON, March 9, 1892.

[*Complainants' counsel makes the same objection to the deposition of this witness as to the deposition of William P. Clough.*]

Int. 1. What is your name, age and residence?

[*Same objection.*]

Ans. John W. F. Willson; age, sixty-four; residence, 57 G Street, South Boston.

Int. 2. Did you ever manufacture fly-paper?

Ans. Yes.

Int. 3. Please explain what kind of fly-paper you manufactured, when and where you manufactured it, and tell all you know about the use, manufacture and sale of such fly-paper.

[*Objected to as immaterial and indefinite.*]

Ans. I have made two kinds of fly-paper, one called the sticky fly-paper, and the other the poison fly-paper. I have manufactured both of these kinds for forty-five years. I first manufactured these fly-papers in East Cambridge; the sale for both kinds was very limited in amount, for ten or twelve years or more, at that time they became staple articles in the market. The sale of fly-papers has increased year by year till now it is an important article of merchandise.

Cross-Int. 4. Now describe in detail the sticky fly-paper which

you have spoken of, state when and where you first made it, sold it, or used it, also state all you know about its public use, manufacture and sale.

[*Objected to as leading.*]

Ans. Sticky fly-paper, as I recollect it, at first, was a composition of resin and castor oil. The resin is dissolved in the castor oil by heat, the mixture was then spread on paper by hand brushes. The paper at that time was the common brown paper, or a manila paper, so called; the paper was first covered with a sizing made of glue, this sizing rendered the paper impervious to this mixture of oil and resin. The first I made was in East Cambridge, while learning the drug business. The first I recollect being sold was to the hospital connected with the jail and house of correction, situated in East Cambridge. This sale was by the recommendation of Dr. Anson Hooker, resident surgeon at that place. The sales of fly-paper were first done by boys, who peddled it about the streets, houses and stores. The starting point of this fly-paper business dates back to 1846 or 1847, as near as I can make it. As near as my memory serves I first made it in East Cambridge, in 1846 or 1847, — I go by memory only. It was the sticky material as described, spread with a brush on common-brown paper, or manila paper, first prepared with a glue sizing to prevent the oil striking through the paper.

[*Objected to as immaterial, and not disclosing any anticipation of the Letters Patent in suit.*]

Int. 5. Is that all the sticky fly-paper you ever made, and, if not, fully describe what other kinds of sticky fly-paper you have ever made, used or sold, and state fully all you remember about such manufacture, use or sale.

[*Objected to as leading, witness's last answer being presumed to state the facts within his knowledge.*]

Ans. After a demand for sticky fly-paper had been made I used my efforts in improving the quality and the looks of this merchandise. The first improvement was the quality of the paper; I had white paper made purposely. This was in large flat sheets of heavy white paper, first printed with a picture or large label in red ink, with the name "Mean Plum", Chinese fly-paper free from poison; this was spread over the whole surface of one sheet with the exception of one inch entirely around the sheet; then another unspread sheet of

paper was placed on top of this, making two sheets of paper, as the underneath sheet produced the same effect on the top sheet when pressed together. After awhile I found it more convenient to spread one half of a sheet of paper and then double it together, so as to produce the same effect, this method I pursued, I think, for about twenty years; and I have continued the manufacture of sticky fly-papers in this manner uninterruptedly for over forty years.

[*Answer objected on the same grounds.*]

Int. 6. Did you ever manufacture any sticky fly-paper except what you have already described, and in the manner which you have already described, and, if so, state when, where, and all you know about its manufacture, public use and sale?

[*Objected as leading.*]

Ans. I was always experimenting to make improvements. Among the many improvements was the placing on of a wax border or bar, to prevent the sticky material from oozing out between the sheets; this device was put into practical use by myself in 1878, although I had experimented with the same device long before; for the last forty years all my manufacturing has been down on Broadway, South Boston. The sales have been made all over New England, by peddlers and wholesale dealers.

Int. 7. At what date, or about what date, was this sticky fly-paper, with a wax border, sold to the public or in public use, and for what period did it continue to be on public sale?

[*Objected to as leading.*]

Ans. First sold to the public in 1878 and continued to be sold for about three years.

Int. 8. Please examine the exhibit marked "Clough A", and state in what respects, if any respects, the sticky fly-paper with wax border, which you sold in 1878, differed from that.

[*Objected to as leading, and incompetent, witness not having been qualified to give expert testimony.*]

Ans. The exhibit marked "Clough A" now presented to me, differs in no respect from that manufactured by me in 1878; it is from the same lot of paper I used at that time, printed upon the same type, and is in every respect the same, although torn and disfigured.

[*Answer objected to as incompetent.*]

Int. 9. For what purpose did you place the wax border on the sticky fly-paper made by you in 1878, and how did it happen that you commenced to use a wax border while you formerly made it without a wax border.

[*Objected to as leading.*]

Ans. I placed the wax border around the edges of the paper, so as to seal the edges and prevent the sticky material, which was of a much thinner consistence, and more liable to run in warm weather, from running out. This idea occurred to me that the wax border would answer this purpose. I had experience in the spreading of plasters, in my drug business, and the suggestion naturally came to me that the confining border was used around many plasters, more especially on blister plasters. This has been a well known method many years.

[*Adjourned.*]

MARCH 9, 1892.

Cross Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Cross-Int. 10. Please state your interest in this suit.

Ans. It is a business I have followed for many years, and in 1885, on account of my health, I wished to give up all business cares. My drug store I gave to my oldest son, John W. F. Willson, Jr. My manufacturing in specialties I gave to my second son, Benjamin F. B. Willson; hence my interest in this suit.

Cross-Int. 11. What relations exist between you and the respondents?

Ans. None whatever.

Cross-Int. 12. How is it, then, that this sale is undertaken by the respondents, and that they advertise themselves to be your wholesale agents?

Ans. I do not know this to be the fact.

Cross-Int. 13. Do you not know that the respondents, Messrs. John A. Andrews & Co., sell the so-called "Mammoth Sticky Fly-Paper", made at your factory?

Ans. I have no factory.

[*Answer objected to as irresponsive, and question repeated*].

The WITNESS. I know that John A. Andrews & Co. sell the "Mammoth Sticky Fly-Paper", made by Benjamin F. B. Willson, my son. I have no pecuniary interest in any business, and have not had for six years.

Cross-Int. 14. And that sticky fly-paper is made, is it not, at the factory formerly owned by you, which you afterwards gave to your son; is that the case?

Ans. It is the case.

Cross-Int. 15. Is it not a fact that an agreement was entered into between the respondents and you or your son, or some one representing the factory interest, by which the respondents were to be protected, or saved harmless from any suit brought or judgment obtained against them, for infringement of the Letters Patent owned by Messrs. O. and W. Thum?

Ans. Yes.

Cross-Int. 16. State the terms of that agreement and by whom it was made?

Ans. I have not the slightest idea who drew it up, but recollect there was an agreement, whereby my son guaranteed to protect his rights, and defend any suit brought against John A. Andrews & Co., and I recollect endorsing some such agreement.

Cross-Int. 17. What do you mean by the word endorsing? Do you mean that you made yourself jointly liable with your son in case such a suit was brought, or such a judgment obtained, against Messrs. Andrews & Co.?

Ans. I meant just this, that you have asked.

Cross-Int. 18. In view of this statement do you wish to modify your answer to Cross-Int. 11? [*Cross-Int.* 11 *read to witness.*]

Ans. I do not wish to modify any of my statements, as it would not affect me personally which ever way the suit goes.

Cross-Int. 19. You are aware, are you not, that if this suit goes against Messrs. Andrews & Co., you are liable over to them, for any judgment or decree that may be obtained, and that they may proceed to collect the judgment from you without regard to your son, if they so elect?

Ans. Yes, if they can find anything to collect.

Cross-Int. 20. What led to the making of this agreement?

Ans. I cannot tell; it is my son's business.

Cross-Int. 21. Did not your son explain to you what the papers were, when you endorsed this agreement?

Ans. Yes.

Cross-Int. 22. Did not that explanation include why he made the agreement?

Ans. I think it did.

Cross-Int. 23. Don't you know it did?

Ans. No.

Cross-Int. 24. What is your recollection of the reasons he gave for making this agreement?

Ans. I think, but am not positive, that this agreement spoken of was drawn up by John A. Andrews & Co., or their attorney, and handed to my son, requesting him to sign it.

Cross-Int. 25. Why did they request him to sign it?

Ans. I cannot tell; it was his business.

Cross-Int. 26. Do you mean that you do not know, or that you decline to tell because it concerns your son's business?

Ans. I don't decline to tell because it is my son's business. I simply give my recollections. My impression is that this paper spoken of was made out after the suit was brought against John A. Andrews & Co.

Cross-Int. 27. Do you remember the date of the agreement?

Ans. I do not.

Cross-Int. 28. How much was the cost of the machine which you say you had made at the Suffolk Glass Works in 1878?

Ans. I never said I had one made there. I had one put together and adjusted at that place.

Cross-Int. 29. What was the cost of that work?

Ans. I think it was thirty-five dollars for the work and materials that they furnished.

Cross-Int. 30. What was the total cost of the machine?

Ans. About eighty dollars.

Cross-Int. 31. Could that machine do the work as fast as a man could do it in the old way by hand?

Ans. Faster, if it kept in shape; but as it was a demonstration in wood it soon became useless.

Cross-Int. 32. About how many men was the machine equal to when in running order?

Ans. Ten or fifteen as near as I can estimate.

Cross-Int. 33. What caused it to get out of order?

Ans. The rolls being made of wood could not withstand the heat of this sticky compound, but became distorted.

Cross-Int. 34. And was that its only fault, if not, state what others there were?

Ans. Otherwise it was perfect.

Cross-Int. 35. Were the other parts of this machine of wood?

Ans. Wood and iron.

Cross-Int. 36. Describe this machine, in detail, both as to its construction and operation.

Ans. The machine consisted of three wooden rolls and one spool or bobbin for placing on the border around the sticky plaster. These three rolls and bobbin were set in a frame work that held them in a relative position; the three rolls and bobbin were geared together by five cog wheels. This arrangement was turned by hand and crank; by turning the crank, the three rolls and bobbin revolved in unison. This machine differs entirely from the one represented and described in a patent of Otto Thum, 305,118, as that patent paper shows no device whatever for placing on the wax border around the sticky plaster; this is the only important part of a machine for spreading sticky fly-paper with a wax border. The description in Thum's patent is wholly inadequate to accomplish this result, and no mechanic can produce a machine by this description in Thum's paper that will produce sticky fly-paper with a wax border. Herein my machine differs from Otto Thum's. Spreading plasters with rolls is a method of spreading plasters used before Mr. Thum or myself were born.

[*Counsel for complainants moves to strike out so much of this answer as expresses an opinion upon the operativeness of the machine described by the Letters Patent in suit as incompetent and immaterial, witness not having been qualified to give expert testimony, and further calls attention to the fact that during his answer witness has*

consulted written memoranda not offered in evidence nor properly qualified, and in default of the production thereof, for examination, moves to suppress the entire deposition of the witness accordingly, and further cross examines de bene esse.]

Cross-Int. 37. Describe the course of the paper in passing through this machine.

Ans. There were two rolls of paper, one at each end of the machine, the paper from one side passed between two rollers, the underneath roller took up the sticky material from the pan underneath and applied it to the paper as it passed between. The roll of paper at the other end of the machine passed between the spool or bobbin and a roll above it. The bobbin revolved in a pan of the wax, and, as it revolved, came in contact with the paper, and the rims placed the wax on the borders at intervals, which formed the border around the sticky plaster. This sheet passed on and came in contact with the paper on the opposite side of the machine; this brought the sticky plaster within the confining border.

Cross-Int. 38. How did you apply the wax to the ends of the sheets?

Ans. By two bars running parallel from one rim of the spool to the other.

Cross-Int. 39. Then if I understand your description, this wax frame or border was applied all around the edge of one sheet, which sheet was then applied to the sticky surface of another. Is that correct?

Ans. Yes.

Cross-Int. 40. Please draw on the record a sketch showing the relative positions of these rolls; take a nickel and draw your pencil around the edge of it, so as to show the roll, as if it were cut in two in the middle.

[MEMORANDUM. *A sketch in pencil, marked "Willson's Sketch", is here drawn upon the original deposition.* JOHN G. STETSON, *Clerk.*]

Ans I have done so and mark it "Willson's Sketch".

Cross-Int. 41. Please describe the sketch you have drawn.

Ans. "A" is the spool or bobbin, that revolves in the wax; "C" is the roll that revolves in the sticky compound; "B" is simply a roll

to hold the paper down against the rims of the bobbin, that places on the wax; "D" is the roll that presses the paper against the roller "C", at the same time, it carries off the two sheets of paper as they come in contact; "E" is the pan that holds the wax for the border; E^1 is the pan which holds the sticky composition. The arrows give the direction the paper G and G^1 travels; "F" represents two bars running parallel; the faces of both are on a plane with the rims of the bobbin.

Cross-Int. 42. These rolls are drawn with continuous cylindrical surfaces, that is correct, is it?

Ans. With the exception of rubber bands at the end of each roll.

Cross-Int. 43. And the roll C then applied the sticky substance by taking it up from the pan and putting it on one surface of the paper continuously, as I understand your description and sketch, did it?

Ans. It did for a while; but at the suggestion of Mr. Clough a slot was cut out the entire length of the roll that put on the sticky part.

Cross-Int. 44. How wide was this slot?

Ans. I think about one inch and a half.

Cross-Int. 45. How large were the rolls?

Ans. About five inches in diameter and eight inches long.

Cross-Int. 46. Why did you discontinue the use of this machine instead of having iron rolls made?

Ans. About that time a parchment paper came into the market, that answered a much better purpose than any other kind of paper, inasmuch as it required no sizing, and was impervious to oil, much cleaner and handsomer in appearance, and more satisfactory to customers; this paper could only be obtained in sheets, could not be had in rolls, and never has been produced in rolls, till within the last six months; it could not be used on the machine to advantage for that reason.

Cross-Int. 47. Why did you not continue the manufacture of sticky fly-paper with a wax border?

Ans. I preferred to use this parchment paper as my customers demanded it and efforts were being made to produce this parchment

paper in rolls, and I did not care to use any other paper expecting year by year to get it in rolls.

Cross-Int. 48. You then made sticky fly-paper, but without a wax border, from this parchment paper, did you?

Ans. I did.

Cross-Int. 49. Were your customers satisfied with this?

Ans. Not thoroughly.

Cross-Int. 50. To whom did you sell your product in 1878 and 1879? I refer to wholesale trade.

Ans. Mr. Clough sold the most of it. I know he sold to Smith & Doolittle, wholesale druggists under the Museum, who ordered quite largely. We had also several agents that preferred to take that paper. We soon found we could not supply the demand as the machine was continually getting out of order, and a great part of the paper, with a border around the sticky part was produced by hand, that is to say, the wax border was placed around the sticky plaster with a wooden hand stamp. We could not supply the demand fast enough at that time and abandoned it for the time being, that is, abandoned putting on the border.

Cross-Int. 51. To whom did you pay the bill for work done at Suffolk Glass Works?

Ans. I think it was Clarence Jenkins who was clerk at that time at their office on Milk Street, brother of Charles H. Jenkins.

Cross-Int. 52. You are the same J. W. F. Willson who upon Nov. 11, 1891, signed an affidavit before John M. Perkins for use in this cause, are you not?

Ans. I signed an affidavit I don't know the date.

[*Copy of affidavit shown witness.*]

Cross-Int. 53. That is the affidavit, is it not?

Ans. I think it is, it looks like it.

[*Copy offered in evidence by Complainants' counsel and marked by the Examiner, with his name and the date, as "Complainants' Exhibit Willson Affidavit", and retained by Counsel for the hearing.*]

Cross-Int. 54. Did you ever instruct John M. Perkins, respondents' counsel in this cause, to write to Messrs. O. & W. Thum, or did you know that he would so write, or had so written?

Ans. Never instructed him, but told him, as my son's counsel, to do as he thought best.

Cross-Int. 55. Your son's counsel in what litigation?

Ans. This one we are interested in now.

Cross-Int. 56. Then how do you account for the fact that Mr. Perkins's letter to Messrs. O. & W. Thum bears date Aug. 29, 1890, while the bill in the case was filed July 28, 1891, and respondents' infringement did not begin till the season of 1891?

Ans. Mr. Thum's previous threats.

Cross-Int. 57. Were these threats in writing?

Ans. No.

Cross-Int. 58. How were they made?

Ans. Indirectly.

Cross-Int. 59. What is meant by the expression in Mr. Perkins's letter, It will certainly be to your advantage to see these parties "as to this matter"?

Ans. I did not write Mr. Perkins's letter. I did not direct Mr. Perkins what to write.

Cross-Int. 60. When did you first see a copy of the Letters Patent of Messrs. O. & W. Thum?

Ans. I think I sent to Washington for them about two years ago.

Cross-Int. 61. Did you send to the Patent Office?

Ans. I think the letter was directed to the Hon. Com. of Patents, Washington, D. C.

Cross-Int. 62. Did you show these patents to Mr. Perkins?

Ans. I did.

Cross-Int. 63. Why?

Ans. After hearing these threats and the claim that Mr. Thum made, I thought it was time to see what rights I had in the matter. I went to Mr. Perkins for advice, showed him these patent papers, and asked him if that prevented me from pursuing methods that I had used years before.

Cross-Int. 64. What advice did he give you?

Ans. Mr. Perkins told me that the claim was invalid on the face of it, after reading the paper.

Cross-Int. 65. Did he explain why?

Ans. I don't recollect any particular explanation.

Cross-Int. 66. So you were acquainted with these patents, when you decided to resume the methods of making fly-paper with wax border, such as you say you practised years ago?

Ans. Never relinquished it; practised it more or less ever since I first commenced it.

[*Answer objected to as irresponsive.*]

Cross-Int. 67. [*Cross-Int.* 66 *repeated.*]

Ans. I don't want to convey the impression of ever abandoning it. I was so acquainted.

Cross-Int. 68. Why was it, Mr. Willson, that you could not furnish this paper last season, in the beginning of the season, to Messrs. Andrews & Co., though able to do so in the latter part of the season?

Ans. I had not the facilities for sizing the paper with glue, and it made a delay, as the size of the paper was a third, or nearly twice, as large as my regular paper.

Cross-Int. 69. Do you still have the apparatus, which you formerly used to make this paper?

Ans. I have the rolls and the spool, in pieces or halves, — they are apart, — to get the rim for another use.

Cross-Int. 70. Did you ever make a change in the composition of your wax border?

Ans. Yes; more particularly in the proportions.

Cross-Int. 71. Why did you make that change?

Ans. To adapt it to the temperature.

Cross-Int. 72. Then the first composition was not satisfactory in that regard?

Ans. No; it required experimenting with.

Cross-Int. 73. Do you remember the exact time when this machine, which you have described, was put together?

Ans. I think in the spring or summer of 1878.

Cross-Int. 74. Do you know themonth?

Ans. I do not.

J. W. F. WILLSON.

Attest: LOUIS GIRARDIN, *Notary Public, Special Examiner.*

BOSTON, March 9, 1892.

The respondents now introduce as a part of their testimony in this case, the certified copies of the file wrappers which include copies of the two patents, and all the Patent Office proceedings in relation to these patents, while the applications therefor were pending in the Patent Office.

The two patents here referred to are those which were granted to the complainants, and are referred to by date, name, number and subject matter in the bill of complaint, and these certified copies are now on file in the Circuit Court in which this suit is brought. The object of so introducing these certified copies here is to make it sure beyond a doubt that they will be a part of this testimony, and so will be printed with other printed testimony or evidence, in this case, taken on behalf of the respondents.

[*Complainants' counsel objects to the introduction in evidence of the said file wrappers, as immaterial, and irrelevant, and as res adjudicata.*]

Complainants' counsel here notes his objections to so much of the depositions returned under this commission as is based upon machine rollers, forms, presses and moulds, and upon exhibits not offered in evidence, nor tendered to counsel for his examination, nor marked by the Special Examiner, nor accounted for, and the absence of which is not explained though their possession by respondents' witnesses is admitted, as secondary and hearsay evidence, and moves to suppress accordingly all such deposition.

Respondents close their case, March 9, 1892.

Attest: LOUIS GIRARDIN, *Notary Public, Special Examiner.*

EVIDENCE FOR COMPLAINANTS IN REPLY.

Registered letter No. 4102, Post-office, Washington, D. C.

Received March 31, 1892, of T. J. Johnston, Patent Atty., a letter addressed to J. McC. Perkins, Boston, Mass.

Station C. HENRY SHERWOOD, P. M., per D. Lan.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO AND WILLIAM THUM, *Complainants*,

v.

JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. BULLARD AND WILLIAM A. DOLE, *trading under the name and style of* JOHN A. ANDREWS & CO., *Respondents*.

CITY OF WASHINGTON,
DISTRICT OF COLUMBIA, ss.

Personally appeared before me, Henry E. Cooper, a notary public in and for the city and district aforesaid, Walter P. Keene, who being duly sworn deposes and says, that on the thirty-first day of March, 1892, he enclosed in an envelope a copy of the notice hereunto annexed, the said envelope being addressed as follows: —

J. McC. PERKINS, Esq.,
31 *Cornhill, Boston, Mass.*,

and that thereupon he did deposit the same in the United States registered mail, having first prepaid the postage thereon.

And further deponent saith not.

WALTER P. KEENE.

Sworn to and subscribed to before me, this thirty-first day of March, 1892.

[SEAL] HENRY E. COOPER,
Notary Public.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO AND WILLIAM THUM, *Complainants*,

v.

JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. BULLARD AND WILLIAM A. DOLE, *trading under the name and style of* JOHN A. ANDREWS & CO., *Respondents*.

J. McC. PERKINS, Esq.,
31 *Cornhill, Boston, Mass.*

You will please take notice that on Thursday, seventh day of April, 1892, beginning at ten o'clock in the forenoon, at the office of C. Van Cleve Ganson, Esq., No. 25 Monroe Street, in the city of Grand Rapids and State of Michigan, I shall proceed to take the testimony *de bene esse* of Fairchild (he being the secretary of the Hazeltine & Perkins Drug Co.) for the complainants.

Such testimony *de bene esse* will be taken before Mr. C. Van Cleve Ganson, a notary public for the county of Kent and State of Michigan, according to the provisions of Sects. 863 and 864 of the Revised Statutes of the United States and the sixty-seventh Equity Rule as amended, inasmuch as said Fairchild lives at a greater distance from the place of trial than one hundred miles, to wit, in the city of Grand Rapids and State of Michigan.

You are invited to attend and cross examine.

T. J. JOHNSTON,
Complainants' Solicitor.

WASHINGTON, D. C., March 31, 1892.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO AND WILLIAM THUM, *Complainants*,

v.

JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. BULLARD AND WILLIAM A. DOLE, *trading under the name and style of* JOHN A. ANDREWS & CO., *Respondents.*

Testimony taken in the above-entitled cause, on behalf of the complainants, pursuant to the annexed notice, at my office, at No. 25 Monroe Street, in the city of Grand Rapids, county of Kent and State of Michigan, before me, C. Van Cleve Ganson, a notary public in and for Kent County, and State of Michigan, this seventh day of April, A. D. 1892, commencing at ten o'clock in the forenoon of said day. Present, William Thum, in behalf of complainants, and no one appearing in behalf of the respondents. And thereupon the following proceedings were had: —

DEPOSITION OF HENRY B. FAIRCHILD.

Complainants call as a witness, Henry B. Fairchild, who, being duly sworn, deposes and says: —

Direct Examination by WILLIAM THUM, Esq., *one of said Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. Henry B. Fairchild; aged forty-five years; city of Grand Rapids, Mich.; I am general manager of the Hazeltine & Perkins Drug Company.

Int. 2. Are you acquainted with the complainants in this suit?

Ans. I am.

Int. 3. Did you ever have, or do you have now, any business relations with them?

Ans. I have had business relations with them since the year 1880, and am still doing business with them.

Int. 4. Please state what those relations have been.

Ans. From 1880 to 1883 I bought unsealed sticky fly-paper from them. Since the year 1883 I have been buying sealed sticky fly-paper from them.

Int. 5. Did they ever sell to you any sticky fly-paper made upon parchment paper? If so, please state when such paper was sold to you, and whether or not it gave satisfaction to your customers.

Ans. On July 17, 1890, they sold to me two hundred and eighty boxes of sealed sticky fly-paper on parchment paper. This paper did not give our customers as good satisfaction as the paper we had of them on manilla paper. On July 30, 1890, we returned to them ninety-four boxes of the paper as unsatisfactory, receiving credit for the same. We having received so many complaints from the parchment paper from our customers that we returned the same to them.

Int. 6. Please state which kind of fly-paper your customers preferred, that made on parchment paper or that made on manilla?

Ans. They preferred that made on manilla.

Int. 7. Did you sell all of that lot of parchment fly-paper, and, if not, how much did you sell, and what did you do with the rest of it?

Ans. We did not sell it all. We sold one hundred and eighty-six boxes. It proved so unsatisfactory to our trade that we returned the balance, — ninety-four boxes, — to them.

Int. 8. Please state how long you have been in the drug business, and what your experience has been with various kinds of fly-paper.

Ans. I have been in the wholesale drug business twenty-six years. My experience with sticky and other fly-paper covers that entire period. The Tanglefoot fly-paper manufactured by O. & W. Thum is the only sticky fly-paper I ever sold that give perfect satisfaction.

Int. 9. Please state what is the reputation in the trade of the sticky fly-paper with a sealing border made by Messrs. O. & W. Thum.

Ans. Its reputation is of the very best.

Int. 10. Please state whether your sales of this fly-paper have

been larger or smaller year by year, and whether or not it has given satisfaction to your customers.

Ans. Our sales have increased every year since we commenced to sell it, and, with the exception of the lot sold us on parchment paper, has given our trade perfect satisfaction.

HENRY B. FAIRCHILD.

Subscribed and sworn to before me, this seventh day of April, A. D. 1892.

[SEAL] C. VAN CLEVE GANSON,
Notary Public in and for
Kent County, Mich.

STATE OF MICHIGAN,
COUNTY OF KENT, ss.

I, C. Van Cleve Ganson, a Notary Public in and for the county of Kent and State of Michigan, do hereby certify that the foregoing deposition of Henry B. Fairchild was taken before me at my office at No. 25 Monroe Street, in the city of Grand Rapids, in said county of Kent and State of Michigan, on the seventh day of April in the year of our Lord 1892, at ten o'clock in the forenoon of said day, on the part of the complainants in the above-entitled cause; that the said deposition was taken pursuant to a notice, which, with the affidavit of the service thereof, is hereto annexed, and for the reason stated in said notice; that the said complainants were present before me at the taking of the same by William Thum, one of said complainants, and that said respondents were not present nor represented by any one at the taking of the same, and that the manner of taking the said deposition was as follows, to wit: that the said witness was first by me duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the cause aforesaid, pending in the Circuit Court of the United States, District of Massachusetts, in equity, wherein Otto and William Thum are complainants and John A. Andrews, William Y. Wadleigh, B. F. Bullard and William A. Dole, trading under the name and style of John A. Andrews & Co., are respondents. He was there examined upon verbal interrogatories by William Thum, one of said complainants, and the said several interrogatories, with the answer of the said witness to each of them severally, were carefully written out by me; after which the said deposition was correctly read over to the said witness, and, being approved by the said witness, was then and there subscribed and sworn to by him, as therein appears.

I do further certify that I am neither attorney nor of counsel for any of the parties in said deposition or caption named, and am in no wise interested in the result of said cause.

In testimony whereof I have hereunto set my hand and notarial seal at the city of Grand Rapids, Kent County, Mich., this seventh day of April, A. D. 1892.

[SEAL] C. VAN CLEVE GANSON,
Notary Public in and for
Kent County, Mich.

Fees, $5.00.

STATE OF MICHIGAN,

COUNTY OF KENT, ss.

I, Cornelius L. Harvey, clerk of said county (and *ex officio* clerk of the Circuit Court thereof, being a court of record, having common law jurisdiction), do hereby certify that C. Van Cleve Ganson, Esq., before whom the above affidavit was sworn to, was at the date of administering such oath a notary public in and for said county, duly commissioned, qualified and sworn, and authorized by the laws of said State to administer such oath; that I am acquainted with the handwriting of said C. Van Cleve Ganson, and believe his signature appended to the above certificate to be genuine; and that the said instrument is executed according to the laws of the State of Michigan.

In witness whereof, I have hereunto set my hand and official seal at the city of Grand Rapids, this seventh day of April, A. D. 1892.

[SEAL] CORNELIUS L. HARVEY, *Clerk*,
by JAS. J. EMERY, *Deputy*.

EVIDENCE FOR COMPLAINANTS IN REPLY.

TAKEN PURSUANT TO THE SIXTY-SEVENTH RULE OF THE SUPREME COURT OF THE UNITED STATES, IN EQUITY, AS AMENDED, BEFORE ME,

JOHN G. STETSON, *Examiner*.

BOSTON, April 13, 1892.

Present: THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants*.

Defendants had notice as appears by proof of notice on file in this case, but do not appear at the commencement of the taking of this evidence.

Counsel for complainants files with the Examiner a paper requesting that the examination in this case be by question and answer, as provided by Equity Rule 67, for the reason that the nature of the evidence expected to be given is such that it cannot be satisfactorily taken down in the form of narrative, and the Examiner grants the request, and determines that the examination before him at this time shall be by question and answer, and that the evidence given may be taken down by a stenographer, etc., as provided by the amendment to said Equity Rule 67 made at the October term, 1890, of the Supreme Court of the United States.

Attest: JOHN G. STETSON, *Examiner.*

DEPOSITION OF EDWIN P. BRYANT.

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

BOSTON, April 13, 1892.

Int. 1. State your name, age, residence and occupation.

Ans. Edwin P. Bryant; forty-one; Arlington; buyer for George C. Goodwin & Co., wholesale druggists, Boston.

Int. 2. With what firm are you now engaged?

Ans. George C. Goodwin & Co.

Int. 3. How long have you been thus engaged?

Ans. About twenty-five years.

Int. 4. What have been your duties?

Ans. Corresponding clerk and buyer.

Int. 5. Has this position made you familiar with their purchases and sales?

Ans. It has.

Int. 6. Are you acquainted with John W. F. Willson?

Ans. I am.

Int. 7. Do you have business dealings with him?

Ans. We do.

Int. 8. Have you ever at any time bought from him sticky fly-paper having a sealing border of wax or similar material?

Ans. We never have.

Int. 9. If the firm which you represent had bought such paper, would you have known of it?

Ans. I should.

[*Direct Examination closed.*]

EDWIN P. BRYANT.

Attest: JOHN G. STETSON, *Examiner.*

DEPOSITION OF CHARLES E. BARKER.

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

BOSTON, April 13, 1892.

Int. 1. State your name, age, residence and occupation.

Ans. Charles E. Barker; fifty-two years; West Newton, Mass.; wholesale druggist.

Int. 2. Are you in business for yourself, and, if so, for how long a time?

Ans. I was in business for myself about in the neighborhood of fifteen or sixteen years, as partner in the concern of Cutler Bros. & Co., of Boston.

Int. 3. Please state between what years you were in business with Cutler Bros. & Co.

Ans. I was connected with the concern about thirty-three years as employee and partner, perhaps more than that, but I will put it within the limits.

Int. 4. What was your occupation there during 1878 and 1879?

Ans. I was employed there as buying and selling goods, and partaking in the general management of the business.

Int. 5. If any particular class of goods were bought by Cutler Bros. & Co. at that time would you have been aware of it?

Ans. I certainly should.

Int. 6. Were you acquainted with John W. F. Willson?

Ans. I was.

Int. 7. Did you at that time or at any other time purchase from

him a sticky fly-paper having a wax sealing border like what is now known in the market as Tanglefoot sticky fly-paper?

Ans. Never to my knowledge.

[*Direct Examination closed.*]

CHAS. E. BARKER.

Attest: JOHN G. STETSON, *Examiner.*

DEPOSITION OF JOSEPH E. MEIGS.

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

BOSTON, April 13, 1892.

Int. 1. State your name, age, residence and occupation.

Ans. Joseph E. Meigs; age, forty-three; residence, Chelsea; salesman in the drug business, with Carter, Carter & Kilham, 356 Washington Street.

Int. 2. How long have you been in the drug business?

Ans. Twenty-three years. In 1866 I went as salesman to Carter. The firm has been changed twice or three times since then, but the same Carter is in the concern.

Int. 3. If any particular class of goods had been dealt in by this firm would you have known of it?

Ans. Yes.

Int. 4. Are you acquainted with John W. F. Willson?

Ans. I am.

Int. 5. Did your firm at any time buy from John W. F. Willson a sticky fly-paper having a wax sealing border like the paper now known in the market as the Tanglefoot sticky fly-paper?

Ans. We did last year, when they had a paper in the market.

Int. 6. Of late years?

Ans. Of late years.

Int. 7. Did you buy from Mr. Willson any of this paper during any time prior to 1880?

Ans. No, sir.

[*Direct Examination closed.*]

J. E. MEIGS.

Attest: JOHN G. STETSON, *Examiner.*

DEPOSITION OF CHARLES F. WOOD.

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

BOSTON, April 13, 1892.

Int. 1. State your name, age, residence and occupation.

Ans. Charles F. Wood; age, forty-three; residence, 98 Brook Avenue, Dorchester; wholesale druggist.

Int. 2. In what firm are you now engaged?

Ans. Weeks & Potter Company.

Int. 3. How long have you been with them?

Ans. Twenty-three years, or will be twenty-three years the seventeenth of June.

Int. 4. In what capacity are you there employed?

Ans. At present I have the general supervision of the establishment, buying and purchasing of all the drugs and patent medicines; one of the stockholders of the company.

Int. 5. During the time that you have been with Weeks & Potter have you been familiar with the various articles bought and sold by them?

Ans. I have; I have taken charge of the stock ever since I have been there.

Int. 6. Are you acquainted with John W. F. Willson?

Ans. I am.

Int. 7. Did you ever buy from John W. F. Willson any sticky fly-paper having a wax sealing border like sticky fly-paper now known in the market as the Tanglefoot sticky fly-paper?

Ans. I never did. I have bought sticky fly-paper of him, but never any with a wax border, to the best of my remembrance.

Int. 8. If such fly-paper with a wax border had been bought by your firm would you have known of it?

Ans. I would, very likely; that is, if it had been purchased within the time that I have had charge of the stock.

Int. 9. If it had been bought in 1878 or 1879 would you have known of it?

Ans. Yes, sir. [*Direct Examination closed.*]

CHAS. F. WOOD.

Attest: JOHN G. STETSON, *Examiner.*

DEPOSITION OF HIRAM H. LOGAN.

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

BOSTON, April 13, 1892.

Int. 1. State your name, age, residence and occupation.

Ans. Hiram H. Logan; forty-two; residence, Brookline; occupation, wholesale grocery business.

Int. 2. With what firm are you now engaged in business?

Ans. Charles E. Moody & Co.

Int. 3. Please state how long you have been in the wholesale business.

Ans. Twenty-two years in June; twenty-two years I guess you might call it.

Int. 4. Have you been engaged with this firm during all of that period?

Ans. Yes.

Int. 5. If this firm had handled a particular line of goods would you have been acquainted with that fact?

Ans. Yes.

Int. 6. Are you acquainted with John W. F. Willson?

Ans. I am not.

Int. 7. Has the firm with which you are engaged ever bought from him any sticky fly-paper having a wax sealing border similar to the sticky fly-paper now known in the market as Tanglefoot sticky fly-paper?

Ans. With the wax border? No.

Int. 8. If they had bought such paper would you have known that fact?

Ans. I would; my part has been the buying.

[*Direct Examination closed.*]

HIRAM H. LOGAN.

Attest: JOHN G. STETSON, *Examiner.*

JOHN McC. PERKINS, Esq., *now appears for Defendants.*

DEPOSITION OF WILLIAM A. DOLE.

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

BOSTON, April 13, 1892.

Int. 1. State your name, age, residence and occupation.

Ans. William A. Dole; thirty-two years; residence is Melrose, Mass.; in the wholesale grocery business.

Int. 2. Are you one of the respondents in this suit?

Ans. I am one of the firm of John A. Andrews & Co.

Int. 3. Are you acquainted with John W. F. Willson?

Ans. Yes, sir.

Int. 4. Are you also acquainted with Benjamin F. B. Willson, his son?

Ans. Yes.

Int. 5. Did you ever make with them an agreement as to the sale of sticky fly-paper having a wax border, and, if so, what was the nature of that agreement? If you have a copy thereof or the original with you, in accordance with the terms of the subpœna served upon you, you may produce the same in answer hereto.

[*Counsel for defendants instructs the witness that the subpœna served upon him makes no allusion to such an agreement as the question refers to, and therefore he is not obliged to furnish any such agreement, if agreement there has been. The witness may answer the question as to an agreement.*]

Ans. By "agreement" you mean a written agreement, I suppose. No, we never had any.

Int. 6. Did you at any time make an oral agreement or have an understanding with these gentlemen as to defending any suit that might be brought against you by reason of your sale of their product, and if you did, please state what that agreement was?

Ans. We had an agreement from Mr. Willson protecting us in case any suit was brought, or anything of that kind.

Int. 7. [*The last interrogatory was read to the witness.*]

Ans. Yes, sir, we did. I cannot state exactly what the agreement was, but it was after we received notice of the suit that we

talked with Mr. Willson about it, and he gave us a guarantee to stand behind us in case any suit was brought against us.

Int. 8. By giving a guarantee, do you mean that he guaranteed to pay any judgment or decree which might be recovered against you?

Ans. I suppose he did. That was my understanding of it.

Int. 9. Am I to understand that that agreement was not reduced to writing nor signed by the parties? Is that the fact?

Ans. No; it was a written agreement.

Int. 10. Have you a copy of that agreement with you?

Ans. Yes, sir.

Int. 11. Please produce it.

[*Counsel for defendants instructs the witness in regard to the original agreement that he can produce that for inspection, but the original agreement he is not bound to leave here as a part of the court record.*]

Ans. I produce the agreement as requested.

[*Counsel for complainants offers to have the agreement copied upon the record in lieu of depriving the witness of the custody thereof, and here offers the same in evidence, and gives notice that, if this offer is not accepted, he will insist upon the same remaining with the Examiner, to be by him returned to the court.*]

Int. 12. Would you prefer that I should have this copied upon the record or leave it with the Examiner? You are at liberty to make your own election.

[*Counsel for defendants instructs the witness that he need not answer this question, but that, speaking in the interest of the defendants, he will not allow that copy to remain here, but has no voice to refuse its being copied.*]

Ans. I want the agreement. I want to keep it.

[*Counsel for complainants requests the Examiner to read the paper produced, and the Examiner reads it, as follows:*] —

"*Know all men by these Presents*, that, whereas the firm of John A. Andrews & Company, of Boston, Mass., have, prior to the date hereof, purchased of the firm of Willson & Company, of South Boston, Mass., fly-paper, and have sold the same, and propose to purchase such paper in the future and sell it in ordinary course of business;

And, whereas, said firm of John A. Andrews & Company have been notified that O. & W. Thum, of Grand Rapids, Mich., contend that the fly-paper so manufactured by Willson & Company, and sold by John A. Andrews & Company, infringes certain patents owned or controlled by the said O. & W. Thum, and the latter have threatened suit against said John A. Andrews & Company:

Now we, J. W. F. Willson and B. F. B. Willson, both of South Boston, Mass., the latter carrying on business as Willson & Company, do hereby jointly and severally covenant and agree that in case any suit or suits shall be brought against said John A. Andrews & Company, or any members of said firm, or any of their customers, for or on account of any alleged infringement of Letters Patent by the use or sale of fly-paper manufactured and sold, supplied to said firm of John A. Andrews & Company prior to the date hereof or hereafter by said Willson & Company, they, the said J. W. F. Willson and B. F. B. Willson, will forthwith assume the defence of said suit or suits and carry on the same to final judgment at the sole expense of them, the said J. W. F. Willson and B. F. B. Willson, and without expense to said John A. Andrews & Company, or any members of said last-named firm, or their customers, and in case the plaintiffs shall succeed in any such suit or suits, that they, the said J. W. F. Willson and B. F. B. Willson, will pay all sums that said John A. Andrews & Company, or any member of said firm, or any of their customers, shall be ordered or adjudged to pay as damages, profits or cost of suit.

In witness whereof the said J. W. F. Willson and B. F. B. Willson have hereunto set their hands and seals this sixth day of July, 1891."

J. W. F. WILLSON. [SEAL]
B. F. B. WILLSON. [SEAL]

Int. 13. That is the only agreement made between you except the ordinary mercantile agreement as to prices and terms, is it not?

Ans. Yes, sir; that is the only written agreement.

[*Direct Examination closed. No Cross Examination.*]

WILLIAM A. DOLE.

Attest: JOHN G. STETSON, *Examiner.*

DEPOSITION OF EDWARD J. MURPHY.

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

BOSTON, April 14, 1892.

Int. 1. State your name, age, residence and occupation.

Ans. Edward J. Murphy; age, fifty-eight; 130 Dorchester Street, South Boston. I am now clerk in a wholesale jewelry house.

Int. 2. Have you had any experience in mechanical matters?

Ans. Yes, sir; all my life until within the past five years. I was able to go to work about fifteen years of age. I was engaged in mechanical business all my life prior to five years ago?

Int. 3. Were you ever employed by the Suffolk Glass Works?

Ans. Yes, sir.

Int. 4. Please state what the nature of your occupation there was.

Ans. I was engaged there as mold maker, or what you would call die maker, for finishing the ware for market.

Int. 5. How many persons were employed?

Ans. At times there was five and six. The latter part there was not but three. Under Jenkins & Hodgdon there was not but three.

Int. 6. Were you acquainted with John Campbell?

Ans. I knew of him.

Int. 7. Please state whether or not he was employed there in 1878 and 1879, and give the reasons which give you your opinion.

Ans. Well, to the best of my judgment and belief, he was not engaged there at that time, — any of that part, — because my reasons for saying so is, he was engaged in erecting shafting after the place had been burnt down, and as quick as he concluded that part of the business he was discharged. He had no connection with any other parts of the building. He never was engaged in making dies, or anything connected with them.

Int. 8. State the date of the fire at the Suffolk Glass Works.

Ans. I can't precisely. It was prior to Hodgdon & Jenkins having the place in their hands.

Int. 9. Were you while there employed to manufacture any machinery of any kind for Mr. John W. F. Willson, of South Boston?

Ans. I did make some articles for Mr. Willson, of South Boston.

Int. 10. Please state what such machinery was.

Ans. Well, some were molds for bottles. Then I corrected a machine he had for punching belladonna plasters, and arranged a press for him, a press for pressing these plasters, punching the holes in them. This die was inserted under this press, and this press was brought down to punch the holes through.

Int. 11. Did you ever at any time make for him or by his order a machine for the manufacture of sticky fly-paper?

Ans. I never, to my knowledge, had anything to do with that paper. I don't know anything about it.

Int. 12. If such a machine had been made in the Suffolk Glass Works would you have known of it?

Ans. I should probably have known of it.

Int. 13. Please state the reasons which lead you to think that you would so have known of it.

Ans. I understand from this gentleman's drawing there was quite a number of rolls connected with his arrangement for manufacturing this paper, and he claims they were made out of wood. Well, there was but one speed lathe in the establishment for wood-turning purposes, and that was in my department, and I had the tools and those things for working on that lathe in my room there, and under my supervision and care; so if he had been making that thing I should probably have known something about it; though it is possible he might have had a speed lathe outside the establishment, for all I know, but it wasn't done in there, to my knowledge.

Int. 14. I call your attention to the sketch made upon the record by Mr. John W. F. Willson, marked "Willson's Sketch", and also to the description thereof given by the witness Charles H. Jenkins on the part of the respondents, and the statement in reference thereto found on pages 60 and 61 of the printed record: I ask you to

examine them, and tell me if you ever saw a machine like that in the Suffolk Glass Works.

[*Witness examines sketch and record.*]

Ans. I never have, sir. I never saw anything like that there in my life.

Int. 15. Please state between what years as nearly as you remember you were employed at the Suffolk Glass Works.

Ans. Well, I should say that I was employed there between twenty-five and twenty-six years.

Int. 16. Please state when your employment began and when it ended, roughly.

Ans. I think it commenced the latter part of 1860, and then there was times that they had stopped. The place was burnt down, and I was out of their employ about a year until, about seven years ago, I think it is now, in May, they closed again. I am stating this as near as my judgment will permit, you know, without any notes or anything.

Int. 17. Were you employed there in 1878 and 1879?

Ans. Yes, sir.

Cross Examination by JOHN M. PERKINS, Esq., *Counsel for Defendants.*

Cross-Int. 18. Do I understand you to state that during the year 1878 or 1879, at the Suffolk Glass Works, in South Boston, of which Charles H. Jenkins was the proprietor or a part proprietor, there was not made at those glass works any machine which could be used for making fly-paper?

Ans. I don't know what they might have made in some other parts of the establishment, but in my department there was nothing of the kind made there.

Cross-Int. 19. What was your department?

Ans. It was the mold department,—styled in the business,—or die room.

Cross-Int. 20. And do you state that there was not put together and adjusted at the glass works during the years 1878 and 1879 the parts of a machine for making fly-paper, which parts were made at another place than the Suffolk Glass Works?

Ans. I never saw that, sir.

Cross-Int. 21. Could there not have been put together and adjusted at the Suffolk Glass Works the parts of a machine for making fly-paper, which parts were made elsewhere than at the Suffolk Glass Works, without your knowledge of the fact?

Ans. There might be in other parts of the building, but not in mine.

Cross-Int. 22. Did you speak of having any knowledge of a machine having been made partly or wholly, or the parts of a machine adjusted, at the Suffolk Glass Works, for making some kind of plasters?

Ans. I remember of adjusting a die to a press for punching belladonna plasters.

Cross-Int. 23. That machine which you have referred to for punching plasters is the only machine for operating on plasters or any similar thing that was made or adjusted there during 1878 or 1879, with your knowledge, was it?

Ans. That was all to my knowledge. I have no knowledge of anything else there.

Cross-Int. 24. Was that machine for making plasters made there, or any part of it, during the year 1878 or 1879?

Ans. No, sir; it was not made there.

Cross-Int. 25. In what year was it made?

Ans. I cannot give you the date exactly, as I have no notes about it. I don't seem to remember about that. I can't give you the precise time.

Cross-Int. 26. Could you conscientiously swear that it was not made five years before 1878?

Ans. I don't know exactly what time that machine was made. I haven't any notes to guide me, but all I have is a recollection of having adjusted this machine for him. What year it was I can't say. The question is put to me as to what I had done for Mr. Willson. I mention that as among other things. The precise date I suppose we could find out by referring to the office books.

Cross-Int. 27. All the adjusting you did for the plaster machine was in making a die for punching holes, was it?

Ans. I didn't make the die, sir. I merely adapted it to the

press, corrected a few little errors in certain directions, and applied it so that they could have punched the holes through and under this press. This die was partly made out of the establishment.

Cross-Int. 28. Then the whole machine was made somewhere else?

Ans. Well, yes, the whole machine was made somewhere else.

Cross-Int. 29. During the years 1878 and 1879 were you there continuously each day during work hours for the full period of those two years?

Ans. No, sir, I was not.

Cross-Int. 30. Can you tell for what period or periods during the years 1878 and 1879 you were absent during work hours?

Ans. Well, I could make a pretty good estimate. I was probably, in those two years, I was about seven or eight weeks, not continuous either.

Cross-Int. 31. For how long a period at any one time during those two years were you absent, continuously absent, I mean, in one period?

Ans. Probably, at one time I might have been three weeks, three and a half.

Cross-Int. 32. While you were absent during these intervals of three weeks at a time was the mold shop of which you had charge closed entirely?

Ans. No, sir.

Cross-Int. 33. Or was somebody else there in charge of it?

Ans. There was no person in charge of it except Mr. Jenkins. There was nobody there competent to take charge.

Cross-Int. 34. Was there any work done in the mold shop during the periods while you were absent?

Ans. Yes, there was work done in there by a young gentleman that was under my charge.

Cross-Int. 35. Can you say that during these periods of your absence the parts of a machine to make fly-paper were not adjusted in the Suffolk Glass Works?

Ans. Well, I couldn't make a statement with regard to that in my absence, but if there had been anything done there I should probably have heard of it from this young gentleman that was in my department.

Cross-Int. 36. Was it not possible for the parts of a machine to make fly-paper to be adjusted there in the mold room in your absence, provided the workmen there had not the slightest knowledge, and had no means of knowing, what the machine was designed for?

[*The question is objected to, the witnesses on the part of the respondents having testified that fly-paper was made upon this machine in the Suffolk Glass Works at various times until the machine was perfected, and that the fly-paper then turned out was the same in every respect, excepting as to quality, with the product since made by Messrs. O. & W. Thum, and as, therefore, not stating a possible case.*

In response to the objection put on record by the counsel for complainants, the counsel for respondents desires to call the attention of the Court to the fact that the testimony for the respondents proves that this experimenting to which reference has been made was in a secret room unknown to the employees.

Counsel for complainants therefore objects to the whole of the testimony thus alluded to, as showing experiments not in answer to the claim of any Letters Patent granted.]

Ans. Well, I hardly think that they could have performed anything of that kind. The room was not very large, and this young man that I had under me was pretty intelligent. I think he would have acquainted me with something about it or told me something about it. I never heard anything about manufacturing fly-paper in the establishment. I never knew anything about it.

Direct Examination resumed by Mr. Johnston.

Int. 37. Can you remember whether you were absent in May, June, or July, 1878?

Ans. I couldn't state particularly. I think, to the best of my judgment, I was there.

Cross Examination resumed by Mr. Perkins.

Cross-Int. 38. Will you state how it that is, after a space of fourteen years, with nothing to revive the fact in your memory, you are now able to state under oath that during the months of May,

June, and July, 1878, you were present in the mold shop during working hours?

Ans. From the very fact I had three children, sir, and in 1878, that part of the year, they were all laid up with the scarlet fever, and I was bothered considerable in 1878 and 1879. That is why I can recall that.

Cross Int. 39. Wouldn't the fact that during this period your children were seriously ill have a tendency to keep you away from your work rather than an inducement to keep you continuously at it?

Ans. No, sir; because I was within call. I was on Vinton Street. The factory wasn't probably more than four hundred feet from me, four or five.

Cross-Int. 40. Is that all the way by which you are enabled to remember that you were present in the mold shop in the Suffolk Glass Works continuously during the work hours of May, June, and July, 1878?

Ans. Well, that is one; and I was obliged to work for a living. I needed money that I procured by labor, in order to live. My expenses were increased, and I should probably think it was sufficient to indelibly stamp it on your mind.

EDWARD J. MURPHY.

Attest: JOHN G. STETSON, *Examiner.*

DEPOSITION OF WILLIAM THUM.

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

BOSTON, April 14, 1892.

Int. 1. State your name, age, residence and occupation.

Ans. William Thum; thirty years; Grand Rapids, Mich.; manufacturer of sticky fly-paper.

Int. 2. Are you one of the parties to this suit?

Ans. I am.

Int. 3. What experience have you had in the drug trade? Please state in your answer the length of your service, and in what it consisted.

Ans. I was engaged in the drug business from 1876 until 1888, including both years. I was apprentice the first, and then acted as clerk, and the three last years I was proprietor.

Int. 4. Are you acquainted with the manufacture of medical plasters, such as have been referred to during the argument upon this case?

Ans. I am.

Int. 5. Please state what you know about the manufacture and use of such plasters.

Ans. The plasters referred to in this case are such as were made with adhesive borders. This adhesive border was a strip or surface of adhesive material, which served to hold the plaster in its proper place on the body. To facilitate this explanation, I will call the medical material, which was spread, just plaster material, and the sheet upon which this material was spread, simply leather, and the adhesive border, adhesive border, and the sheet which was customarily laid over all, wax paper. This method of preparing plasters is now going out of use to a very great extent, as advancing pharmacy has devised formula for preparing plaster material of a sufficiently adhesive nature to insure its adhesion to the skin without additional aid. The seal on fly-paper is a strip of material employed to confine the fly-catching material within its proper limits upon the surface of the fly-paper sheet during storage of the paper. The adhesive border on plasters was not employed for all plasters, only such whose plaster material was non-adhesive or only slightly adhesive. This plaster material was of a non-flowing or a non-oozing nature, and the adhesive border did not act as a seal, nor could it have acted so, since it did not connect two facing leather surfaces by which an enclosure would have been formed. The plaster consisted of a leather to one face of which the plaster material and the adhesive border adhered. Upon this plaster material and adhesive border was laid the wax paper. This wax paper was in no instance united with the plaster material or border, and if the plaster material had been of an oozing nature, it would have escaped through the opening between the adhesive border and the wax paper. This becomes especially evident in the plasters having the substance of the adhesive border spread in a uniform surface over the entire

leather. In these plasters the plaster material is placed over the substance of the adhesive border, and the upper surface of the adhesive border is on a level with the under surface of the plaster material, the wax paper being laid over the plaster material, and the opening for the egress of the plaster material, had it been of an oozing nature, would have been of the same depth as the depth of the plaster material, which could then have readily flown over the adhering border.

Furthermore, if the plaster material had been of a flowing nature, it would have adhered to the wax paper as well as to the leather, and then upon the removal of this wax paper previous to using the plaster, one half of this plaster material would have been removed with it, which was not the case, and which would have impaired the plaster very materially.

Still further, if this plaster material had been of a flowing nature, it would have slowly flown to the lowest point of the plaster while the plaster was in use on the body, and the adhesive border would have retarded temporarily the immediate progress of the accumulating plaster material. The adhesive border, being kept pliable by the warmth of the body, would have finally yielded to the continued pressure of the above accumulating plaster material, and would have escaped from beneath the leather. Such a plaster would have been practically worthless; for as soon as some of the material had flown to a lower point, the upper portions of the leather would become practically bare and inert, and after the accumulated plaster material had broken from within the boundaries of the leather the plaster would be worse than useless.

Int. 6. On what kind of fly-paper is the seal used?

Ans. The fly-paper seal such as described in our Letters Patent is used only on sticky fly-paper, the central surface of which is coated with an oozing or flowing fly-catching material. If this material were not of a flowing nature, it would require no confining seal.

Int. 7. What is the use of the border on the plaster?

Ans. The adhesive border on these plasters is employed to make the leather adhere and remain on the proper place on the body. As explained before, it did not and could not have served to confine any

flowing substance that might have been within. Plaster material that was sufficiently adhesive did not require any further aid in the way of adhesive border to make its adhesion certain, consequently the border served no other purpose than to retain the leather in the proper place.

Int. 8. What is the utility of the border on fly-paper as contrasted to the plaster border?

Ans. The sealing border on fly-paper served to retain the catching material within proper limits on the sheet. It further served to protect the edges of the catching material against the drying action of the air. If no border were used, the air would reach the catching material at the edge and between the facing leaves, and dry and toughen it to such an extent, if kept in stock sufficiently long, that tearing of the leaves would very often result upon an attempt to separate them for use. Both these faults are perfectly overcome by the use of the sealing border. The border did not serve to retain the two facing leaves in the same relative position. In 1882 we manufactured the fly-paper without a sealing border, and we found that the facing sheets remained exactly in the same relative position, and no shifting whatever occurred.

Int. 9. When does the plaster border come into use?

Ans. The adhesive plaster border comes into use only after the plaster has been applied to the body.

Int. 10. When does the fly-paper seal come into use?

Ans. The fly-paper seal comes into use immediately upon the completion of the paper, and it serves its purpose until the leaves are separated for catching flies. After the leaves are once separated the seal cannot perform its functions, as they are not two facing surfaces to unite to form an enclosure, and the above-mentioned protection against the action of the air is no longer required.

Int. 11. Please state the nature of the materials used in the fly-paper seal and in the plaster border.

Ans. Since the plaster border serves to hold the leather fast to the skin, it is necessarily of a tough and adhesive nature when applied to the body, and it is of such a nature that it cannot be readily removed. It could not adhere with sufficient certainty if it did not have these properties. The fly-paper seal is of such a nature that it

will adhere sufficiently firm to hold itself on the proper place surrounding the sticky material, yet not adhere so firmly as to interfere with the separation of the leaves to an extent that would cause tearing of the paper.

Int. 12. Please state the construction of the two borders you have mentioned.

Ans. The plaster border is a strip of material which adheres, or is made to adhere, to one surface of the leather, the upper surface, by its (the border's) under surface. The fly-paper seal is a strip of material constructed in a way that it adheres to and unites two facing leaves or surfaces with both its own surfaces.

Int. 13. I hand you certain letters and ask you if you have ever seen these letters before, and, if you have, where did you see them, and under what circumstances?

Ans. I saw all of these letters before in our office in Grand Rapids. They are letters written to us by our customers to be used as testimonials for advertising purposes. They testify to the quality and satisfaction that our fly-paper is giving.

[*Counsel for complainants offers in evidence the letters referred to by the witness, and they are marked, respectively, "Complainants' Exhibit Snell Letter", "Complainants' Exhibit Irving Letter," "Complainants' Exhibit Noyes Letter", "Complainants' Exhibit Smith Letter", "Complainants' Exhibit McDowell Letter No. 1", "Complainants' Exhibit McDowell Letter No. 2", "Complainants' Exhibit Leggett Letter, No. 1", and "Complainants' Exhibit Leggett Letter No. 2", and each further identified by the signature or initials of the Examiner.*]

Int. 14. Have you read and do you understand the description of a certain machine alleged to have been constructed for Mr. John W. F. Willson at the Suffolk Glass Works in 1878, as contained in the depositions of Messrs. Clough, Jenkins and Willson?

Ans. I have read the description, and I understand it, I believe.

Int. 15. I call your attention to Cross-Int. 33 in the deposition of John W. F. Willson, page 92 of the printed record, and ask you if his experience as there set forth coincides with yours?

Ans. This answer states in effect that wooden rolls did not withstand the heat of the sticky compound, but became distorted. Our

experience is contrary to this. The machine which we used during the year of 1882 was made with a wooden sticky roller upon a small iron shaft. The entire season's use did not distort the roller to any appreciable extent. We undoubtedly would have continued the use of this roller had we not made one of iron which contained improvements that could not well be made of wood.

Int. 16. I show you a wooden roller with an iron shaft similar to that which you have described, and ask you to identify the same, and tell me what it is, and where it comes from, if you can do so?

Ans. I see the roller, and recognize it as the one used by us in the spreading on of sticky material on our fly-paper during the season of 1882. It was first used in a shed near our home, and since that season it has lain in the attic of our home until within six months ago. From there it was removed to our pattern shelf in our present factory. From this place it was taken by myself and expressed to our attorney for use in this case.

[*Counsel for complainants offers in evidence the roller testified to by the witness, which is marked "Complainants' Exhibit Roller, J. G. S., Ex'r".*]

Int. 17. Was this roller used in preparing your application for a patent?

Ans. This roller was made either a short time before or during the application for a patent. I distinctly remember this as the gear wheel which turned the one now on the shaft of this roller because I marked it "Patent applied for", which mark I again noticed when packing this roller.

Int. 18. What are the slots cut on the periphery of the roller and what purpose do they serve?

Ans. At first the roller was tried with a smooth surface, with the exception of the large intermission. It was found, however, that the sticky material was applied too heavily at one end of the sheet, and for this purpose numerous grooves were cut in the surface in the direction of the circumference, and others parallel to the axis of the roller. We found by this method that the sticky material was applied more uniformly. Without these grooves the sticky material was propelled to the end of the sheet last to pass over the roller, and when the intermission came the heavy blotch of sticky

material would remain there accumulated. These slots served to receive this accumulating sticky material, and the result they produced was satisfactory.

Int. 19. Could this roller be used now for the production of sticky fly-paper?

Ans. With all my knowledge of the subject, I feel sure it could, and it would serve as well as it ever did.

Int. 20. To what heat has this roller been subjected?

Ans. It was subjected to the heat of the sticky material, which sticky material was heated part of the time by the aid of steam at a low pressure, and a part of the time the sticky material was heated by the fire of an oil stove. The sticky material was hot enough to make it of the proper consistency for application.

Int. 21. How much did this machine cost?

Ans. I cannot tell the exact cost, but the principal cost was for machine work, iron and shafting, which bill amounted to between $44 and $46. I do not think that the remaining costs, which covered carpenter work and tinsmith work, amounted to more than $20.

Int. 22. What would be the cost approximately of a new machine built in the light of your experience; would it be greater or less?

Ans. I think that our first machine, I have reference to the one we used in 1882, and of which this roller was a part, could be duplicated readily for $50.

Int. 23. About how many men's work could this machine do?

Ans. In the condition in which this machine was in 1882, it required two men to run it, and I believe that it would require more than twenty persons to finish the same amount of fly-paper by hand that two persons could make with the aid of this machine.

Int. 24. Have you ever made any parchment fly-paper with wax border, if you have, state fully the circumstances attending its manufacture, use and sale, and whether or not your customers preferred it to manilla paper?

Ans. We made fly-paper on parchment paper with a seal, in 1890. Our object was to ascertain by actual experiment if fly-paper so made would give better satisfaction than if made on manila paper, as we had constantly made before. We sold nearly

all of this paper to the Hazeltine & Perkins Drug Company, of Grand Rapids. They sold the larger part of this paper, but soon received complaints from several of the retail dealers to whom they sold it, that they, these retail dealers, would prefer the original style of our fly-paper made on manilla. These complaints were numerous enough to induce their manager to return such amount as he had left on hand, not more, I think, than a month later than when the company received this parchment paper. We accepted this returned paper, and placed it to the credit of the company's account. Later on we sold parts of it at a much reduced price to H. H. Stafford & Son, of Marquette, Mich. I do not remember the exact disposition of the balance of it. This parchment paper seemed not so objectionable to Stafford & Son, as we heard no more of it, although we guaranteed that it would give satisfaction at the price we received.

Int. 25. What is your opinion as to the operativeness of the machine described in the depositions of Clough, Jenkins and Willson, particularly as to the description contained in the answer to Cross-Int. 36 and sketch made in answer to Cross-Int. 40, pages 92 and 93 of the record?

Ans. The answer given by Mr. Willson to Cross-Int. 36, describing the machine in detail as to construction and operation, I think is very incomplete. He has not described any means for keeping the melted catching material and the melted border material sufficiently liquid by heat to permit of its proper application. He has not described any method by which the two strips after coming into contact were extracted from the machine. The sketch indicates that he intended that the rollers B and D served the purpose of drawing the paper from the supplying rolls. Had this been done, then the rollers B and D would have had to be made to exert some pressure on the paper underneath and press the paper down on the two rollers C and A, which would necessarily press the fly-catching material and the melted material of the sealing border out of place and out of shape. If the rollers D and C drew forth the paper G^1 by pressing the paper between them, then whenever the intermission, which is not shown in the sketch, but which is described later on in Mr. Willson's testimony, would come uppermost and face the roller D,

then no pressure would be exerted on the paper G¹, and there would be nothing to propel it onward. The same can be said in relation to the rollers B and A drawing forth the paper G¹. Furthermore, Mr. Willson has not described any means by which the continuous double strip was divided into sections of one double sheet each. Mr. Willson describes the machine as having consisted of four rollers all geared together to run in unison with the aid of five gears or cog wheels. I have thought, since reading the testimony first, of several ways by which the four rollers could be geared together, but I have not been able to think of a combination of five gears which would run the rollers in unison, and at the same time in the proper direction. It will either require more gears or two of the rollers will run in the wrong direction. If the machine were or had been otherwise operated, it would have been necessary to have a shear attachment to cut the double strip into sections while the machine was running, since, every time that a machine of this description would be stopped to give time for cutting, the sticky material would flow to lower points on the circumference of the roller, and be applied unevenly to the paper. To make a shear which cuts paper while in motion into definitely sized sheets would require mechanism more complicated than the fly-paper machine described, and should have been mentioned in connection with the machine to make the description complete. The paper could have been cut by hand, and the machine stopped for the purpose, but the bad results just mentioned would have been the effect.

Mr. Willson states that his description of his machine differs entirely from the description in the patent of Otto Thum, No. 305,118, as that patent shows no device whatever for placing on the wax around the sticky plaster. This patent was applied for before Otto Thum invented the sealing border, and the machine described was not made for the purpose of applying this seal; nevertheless, Mr. Willson's sketch of his machine is almost identical with the drawing in the above-mentioned patent, since in that drawing there are shown two sets of sticky rollers, and two sets of rollers situated immediately above these sticky rollers. This machine was described in this way, as Otto Thum thought it might be desirable to apply sticky material to both of the strips before they came in contact. The

only difference between Mr. Willson's sketch and the sketch in the above-mentioned patent is that Willson describes one of the rollers as having applied the sealing material, whereas the corresponding roller in the drawing of the patent was used to apply sticky material. A rough cross section of Willson's alleged machine and the machine which the patent means to describe are quite identical. Mr. Willson refers to the spreading of plasters with rolls as a method used a great length of time. This subject I do not know much about, but the particular combination and shape of the applying rollers and the difference in the finished product between plasters and sticky fly-paper suggests to me that there must be some invention in the fly-paper machine which is not included in machines for making plaster. For instance, all the plasters that I have been able to learn of as having been made by rollers were spread in a continuous strip, and did not have the large cross intermission in the rollers.

Int. 26. I show you two letters addressed to Messrs. O. & W. Thum, one of which is signed "National Fly Paper Company" and the other "J. McC. Perkins", and ask you if you have seen those before, and, if so, when did you receive them?

Ans. I have seen the letter signed by the National Fly Paper Company before, and in our office. We received it there during May, 1890. I have seen the letter signed by J. McC. Perkins before, and in our office. It was received there about September, 1890.

[*Counsel for complainants offers in evidence the two letters referred to by the witness, and the same are marked, respectively,* "*Complainants' Exhibit Letter, J. G. S., Ex'r*", *and* "*Complainants' Exhibit Perkins Letter, J. G. S., Ex'r*".

Direct Examination closed.

Adjourned to April 15, 1892, *at* 10 A. M.]

APRIL 15, 1892.

[*Met pursuant to adjournment.*]

Present: *Counsel for complainants.*

Counsel for defendants does not appear, but defendants are represented by Mr. J. W. F. Willson, who waives Cross Examination.

WILLIAM THUM.

Attest: JOHN G. STETSON, *Examiner.*

EVIDENCE FOR COMPLAINANTS IN REPLY.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

THUM ET AL. *v.* ANDREWS ET AL.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

Personally appeared before me, an officer duly entitled to administer oaths, Thomas J. Johnston, who, being duly sworn, deposes and says, that upon the fourteenth day of April, 1892, he enclosed in an envelope a copy of the within notice, and addressed the envelope as follows:

JOHN M. PERKINS,
31 *Cornhill, Boston, Mass.*

And that thereupon he did deposit the same in the United States registered mail, having first prepaid the postage thereon.

THOMAS J. JOHNSTON.

Sworn and subscribed before me, this fifteenth day of April, 1892.

[SEAL] JOHN G. STETSON,
U. S. Commissioner.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

THUM ET AL. *v.* ANDREWS ET AL.

JOHN M. PERKINS, Esq.,
31 *Cornhill, Boston, Mass.*

You will please take notice that on Tuesday, the nineteenth day of April, 1892, beginning at ten o'clock in the forenoon, in the town of Norwich and State of Connecticut, I shall proceed to take the testimony of B. P. Bishop, and other witnesses on the part of the complainant in rebuttal.

only difference between Mr. Willson's sketch and the sketch in the above-mentioned patent is that Willson describes one of the rollers as having applied the sealing material, whereas the corresponding roller in the drawing of the patent was used to apply sticky material. A rough cross section of Willson's alleged machine and the machine which the patent means to describe are quite identical. Mr. Willson refers to the spreading of plasters with rolls as a method used a great length of time. This subject I do not know much about, but the particular combination and shape of the applying rollers and the difference in the finished product between plasters and sticky fly-paper suggests to me that there must be some invention in the fly-paper machine which is not included in machines for making plaster. For instance, all the plasters that I have been able to learn of as having been made by rollers were spread in a continuous strip, and did not have the large cross intermission in the rollers.

Int. 26. I show you two letters addressed to Messrs. O. & W. Thum, one of which is signed "National Fly Paper Company" and the other "J. McC. Perkins", and ask you if you have seen those before, and, if so, when did you receive them?

Ans. I have seen the letter signed by the National Fly Paper Company before, and in our office. We received it there during May, 1890. I have seen the letter signed by J. McC. Perkins before, and in our office. It was received there about September, 1890.

[*Counsel for complainants offers in evidence the two letters referred to by the witness, and the same are marked, respectively, "Complainants' Exhibit Letter, J. G. S., Ex'r", and "Complainants' Exhibit Perkins Letter, J. G. S., Ex'r".*

Direct Examination closed.

Adjourned to April 15, 1892, *at* 10 A. M.]

APRIL 15, 1892.

[*Met pursuant to adjournment.*]

Present: *Counsel for complainants.*

Counsel for defendants does not appear, but defendants are represented by Mr. J. W. F. Willson, who waives Cross Examination.

WILLIAM THUM.

Attest: JOHN G. STETSON, *Examiner.*

EVIDENCE FOR COMPLAINANTS IN REPLY.

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JOHN M. PERKINS,
31 *Cornhill, Boston, Mass.*

And that thereupon he did deposit the same in the United States registered mail, having first prepaid the postage thereon.

THOMAS J. JOHNSTON.

Sworn and subscribed before me, this fifteenth day of April, 1892.

[SEAL] JOHN G. STETSON,
U. S. Commissioner.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

THUM ET AL. *v.* ANDREWS ET AL.

JOHN M. PERKINS, Esq.,
31 *Cornhill, Boston, Mass.*

You will please take notice that on Tuesday, the nineteenth day of April, 1892, beginning at ten o'clock in the forenoon, in the town of Norwich and State of Connecticut, I shall proceed to take the testimony of B. P. Bishop, and other witnesses on the part of the complainant in rebuttal.

Such testimony will be taken before Mr. Frank T. Brown, a special examiner of this court, at his office in said town, and will be taken according to the sixty-seventh Equity Rule as amended.

You are invited to attend and cross-examine.

THOMAS J. JOHNSTON,
Solicitor for Complainants.

APRIL 14, 1892.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

NO. 2893.

THUM ET AL. *v.* ANDREWS ET AL.

Depositions taken before Frank T. Brown, Esq., special examiner of this Court, at his office in the town of Norwich and State of Connecticut, pursuant to the annexed notice.

It is noted that appearance is made for complainants by Thomas J. Johnston, Esq., and that no one appears for respondents.

DEPOSITION OF FRANK H. WOODWORTH.

Frank H. Woodworth, a witness produced on the part of the complainants in rebuttal, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

NORWICH, CONN., April 19, 1892.

Int. 1. State your name age, residence and occupation.

Ans Frank H. Woodworth; Norwich, Conn.; occupation, druggist; age, forty-three.

Int. 2. Please state how long you have been in business.

Ans. Since 1877, in my present location.

Int. 3. Are you familiar with the trade in sticky fly-paper?

Ans. Yes.

Int. 4. Are you acquainted with the sticky fly-paper made by Messrs. O. & W. Thum, known as Tanglefoot?

Ans. Yes, sir.

Int. 5. Did you ever, before this paper came to your attention, see any sticky fly-paper having a wax sealing border?

Ans. No; I never did.

FRANK H. WOODWORTH.

DEPOSITION OF HUGH H. OSGOOD.

Hugh H. Osgood, a witness produced on the part of the complainants in rebuttal, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. Hugh H. Osgood; Norwich, Conn.; seventy-two years old; druggist.

Int. 2. How long have you been in the drug business?

Ans. Fifty-four years and one half.

Int. 3. Are you familiar with the trade in sticky fly-paper?

Ans. I am.

Int. 4. Are you acquainted with product made by Messrs. O. & W. Thum, known as Tanglefoot?

Ans. Yes, sir.

Int. 5. Did you ever see, before that paper came on the market, any fly-paper having a wax sealing border?

Ans. I never did.

Int. 6. Are you acquainted with Merrill S. Noyes?

Ans. I am not.

Int. 7. Can you state the date when you first saw the Tanglefoot sticky fly-paper?

Ans. I should have to refresh my memory from my books. I can not say. But I should say that we have been selling it for the last three or four years,—I do not know but longer.

Int. 8. If a sticky fly-paper with a wax sealing border had been on the market in this neighborhood, would you have been likely to know of it?

Ans. I should.

Int. 9. Do you think that you would have been likely to engage in its sale, and, if so, why?

Ans. I think I should, because we have handled for a great many years sticky fly-paper of other makes, but none with a sealed wax border until Thum's was presented to us.

Int. 10. In your opinion, is fly-paper with a sealing border better or worse than that without it?

Ans. Judging from the demand, and our sales of the sticky fly-paper with the border, it is far preferable and it has superseded the other entirely with us in our trade.

HUGH H. OSGOOD.

DEPOSITION OF N. DOUGLAS SEVIN.

N. Douglas Sevin, a witness produced on the part of the complainants in rebuttal, being duly sworn, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. N. Douglas Sevin; residence, Norwich; occupation, druggist; age, forty-nine years.

Int. 2. How long have you been in the drug business?

Ans. For myself, twenty-seven years.

Int. 3. You were in business here in 1878 and 1879, were you not?

Ans. I was.

Int. 4. You are familiar with the trade in sticky fly-paper?

Ans. I am.

Int. 5. Are you familiar with the product made by Messrs. O. and W. Thum, known as Tanglefoot?

Ans. I am.

Int. 6. Did you ever, before that paper came on the market or under your notice, see any sticky fly-paper having a wax sealing border?

Ans. No, never.

Int. 7. If such paper had been on the market in this neighborhood, do you think you would have known of it?

Ans. I certainly think so, — know so. I was the first dealer in the town to introduce the Tanglefoot paper.

Int. 8. And would you have been disposed to undertake its sale, if you could have obtained it?

Ans. I do not understand that question.

Int. 9. I want to know if you would have been ready to take hold of it, if you could have got any of it.

Ans. Why, I did take hold of it. It was brought to my notice through the agent of Leggett Bros., I think, in New York, and I immediately ordered a quantity of it, and supplied not only my own trade but the other trade about town.

Int. 10. In this answer, you refer to the paper made by Messrs. O. and W. Thum, and sold through Leggett Bros. Do I understand you correctly?

Ans. That is correct. It refers to the Tanglefoot paper, made by O. and W. Thum. I had the first year's business on Tanglefoot paper in town, and as soon as I introduced it, others took it up.

N. DOUGLAS SEVIN.

DEPOSITION OF L. A. GALLUP.

L. A. Gallup, a witness produced on the part of the complainants in rebuttal, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. L. A. Gallup; fifty-three; wholesale grocer; Norwich, Conn.

Int. 2. How long have you been in business?

Ans. In this line of business for fifteen years and one half.

Int. 3. Are you familiar with the trade in sticky fly-paper?

Ans. I am.

Int. 4. Are you acquainted with the product of Messrs. O. and W. Thum, known as Tanglefoot.

Ans. I am.

Int. 5. Did you ever, before that paper came on the market or under your notice, see any sticky fly-paper with a wax sealing border?

Ans. I did not.

Int. 6. Would you, or would you not have preferred such a fly-paper to the ordinary kind?

Ans. I prefer to handle that with the wax border.

L. A. GALLUP.

DEPOSITION OF BARZILLAI P. BISHOP.

B. P. Bishop, a witness produced on the part of the complainant in rebuttal, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation?

Ans. Barzillai Perkins Bishop; age, forty; residence, Norwich; occupation, wholesale grocer.

Int. 2. How long have you been familiar with the grocers' trade?

Ans. Well, fourteen or fifteen years; fourteen years, I think.

Int. 3. Are you familiar with the trade in sticky fly-paper?

Ans. I am.

Int. 4. Are you acquainted with the product made by Messrs. O. and W. Thum, known as Tanglefoot?

Ans. I am.

Int. 5. Did you ever, before that paper was brought to your notice, or put on the market, see any sticky fly-paper having a wax sealing border?

Ans. I did not.

Int. 6. If such paper had been sold here, do you think you would have known of it?

Ans. I think so.

BARZILLAI PERKINS BISHOP.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

THUM ET AL. *v.* ANDREWS ET AL.

I, Frank T. Brown, special examiner of the Circuit Court of the United States, for the District of Massachusetts, in the above-entitled cause, do hereby certify that on Tuesday, the nineteenth day of April, 1892, beginning at ten o'clock in the forenoon, at my office, No. 45 Main Street, in the town of Norwich, and State of Connecticut, pursuant to the prefixed notice, I did take the testimony of Frank H. Woodworth, Hugh H. Osgood, N. Douglas Sevin, L. A. Gallup and Barzillai P. Bishop; the said witnesses being all of full age, and of sound mind, and being by me cautioned and sworn respectively to tell the truth, the whole truth, and nothing but the truth; that said testimony was reduced to writing according to the sixty-seventh Equity Rule, as amended, in my presence, by a competent stenographer, and was then transcribed in type-writing, and signed by the witnesses in my presence.

I further certify that I was attended by Thomas J. Johnston, Esq., as counsel for complainants, and that no one appeared for respondents.

I further certify that the said depositions were by me retained, and sealed up in an envelope, to be addressed to the clerk of the Circuit Court of the United States, for the District of Massachusetts, at Boston, Mass.

In further certify that I am not of counsel or attorney to any of the parties, nor interested in the event of the cause.

In testimony whereof I hereunto set my hand this nineteenth day of April, 1892.

FRANK T. BROWN, *Special Examiner*
of the Circuit Court of the District of Massachusetts.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

THUM ET AL *v.* ANDREWS ET AL.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

Personally appeared before me, an officer duly entitled to administer oaths, Thomas J. Johnston, who, being duly sworn, deposes and says that upon the fourteenth day of April, 1892, he enclosed in an envelope a copy of the within notice and addressed the envelope as follows:

JOHN M. PERKINS,
31 *Cornhill, Boston, Mass.*,

and that thereupon he did deposit the same in the United States registered mail, having first pre-paid the postage thereon.

THOMAS J. JOHNSTON.

Sworn and subscribed before me, this fifteenth day of April, 1892.

[SEAL] JOHN G. STETSON,
U. S. Commissioner.

CIRCUIT COURT OF THE UNITED STATES.

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

THUM ET AL. *v.* ANDREWS ET AL.

JOHN M. PERKINS, Esq.,
31 *Cornhill, Boston, Mass.*

You will please take notice that on Wednesday, the twentieth day of April, 1892, beginning at ten o'clock in the forenoon, in the town of Willimantic, and State of Connecticut, I shall proceed to take the

testimony of Fred Rogers and other witnesses on the part of the complainants in rebuttal.

Such testimony will be taken before Mr. John L. Hunter, a special examiner of this court, at his office in said town, and will be taken according to the sixty-seventh Equity Rule as amended.

You are invited to attend and cross examine.

APRIL 14, 1892.

THOMAS J. JOHNSTON,
Solicitor for Complainants.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

O. & W. THUM *v.* JOHN A. ANDREWS & CO.

Depositions taken before me, John L. Hunter, special examiner of this court, at my office, No. 694 Main Street, Borough of Willimantic, town and county of Windham, in the State of Connecticut, pursuant to prefixed notice.

Commission met pursuant to notice.

Present for complainants, Thomas J. Johnston, Esq. No appearance for respondents.

DEPOSITION OF GEORGE E. STILES.

George E. Stiles, a witness produced on the part of the complainants in rebuttal, being first duly sworn, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. Age, forty-eight; name, George E. Stiles; wholesale grocer; Willimantic, Conn.

Int. 2. State how long you have been in business.

Ans. Been in business here since 1864, town of Windham.

Int. 3. Are you familiar with fly-paper business?

Ans. I don't think I am, generally.

Int. 4. Are you acquainted with the product made by Messrs. O. & W. Thum, known as Tanglefoot?

Ans. I am.

Int. 5. Did you ever, before that came under your notice, see any sticky fly-paper having a wax sealing border?

Ans. I never did.

GEO. E. STILES.

DEPOSITION OF EVERETT M. DURKEE.

Everett M. Durkee, a witness produced on the part of the complainants in rebuttal, being first duly sworn, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. Everett M. Durkee; thirty-five; Willimantic; wholesale grocer.

Int. 2. Are you acquainted with the stick fly-paper made by Messrs. O. and W. Thum, known in the market as Tanglefoot?

Ans. Yes, sir.

Int. 3. Did you ever, before that paper came on the market, or was brought to your attention, see any sticky fly-paper having a wax sealing border?

Ans. No, sir. EVERETT M. DURKEE.

DEPOSITION OF FREDERICK ROGERS.

Frederick Rogers, a witness produced on the part of the complainants in rebuttal, being first duly sworn, deposes as follows:

Dtrect Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. Frederick Rogers; fifty-four; Willimantic, Conn.; druggist.

Int. 2. How long have you been in business?

Ans. Twenty-five years.

Int. 3. Are you familiar with trade in sticky fly-paper?

Ans. Yes.

Int. 4. Are you acquainted with the product made by Messrs. O. and W. Thum, known in the trade as Tanglefoot?

Ans. Yes.

Int. 5. Did you ever, before that came to your notice, see any sticky fly-paper having a wax sealing border?

Ans. Not to my recollection.

Int. 6. If such a fly-paper had been on the market here in 1878 or 1879, do you think you would have known of it?

Ans. I think so.

FREDERICK ROGERS.

DEPOSITION OF FRANK M. WILSON.

Frank M. Wilson, a witness produced on the part of the complainant, in rebuttal, being first duly sworn, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. Frank M. Wilson; age, forty-one; residence, Willimantic; occupation druggist.

Int. 2. How long have you been in the business?

Ans. In business as principal twelve years.

Int. 3. Before that, were you in the same class of business, and if so, for how long?

Ans. Yes; fourteen years.

Int. 4. Are you acquainted with the sticky fly-paper made by Messrs. O. & W. Thum, known in the market as Tanglefoot?

Ans. I am.

Int. 5. Did you ever, before that came to your notice, see any sticky fly-paper having a wax sealing border?

Ans. No.

Int. 6. If such a paper had been on the market here, would you have known it?

Ans. Yes.

FRANK M. WILSON.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

THUM ET AL *v.* ANDREWS ET AL.

I, John L. Hunter, special examiner of this court, do hereby certify that on Wednesday, the twentieth day of April, 1892, beginning at ten o'clock, A. M., I was attended by the witnesses, George E. Stiles, Everett M. Durkee, Frederick Rogers and Frank M. Wilson, who being first cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, did depose and say as in the depositions hereunto prefixed; that the depositions were then and there duly reduced to writing in my presence, and afterwards copied into typewriting, and were retained by me after they had been signed by the witnesses, respectively, to be sealed up and sent to the Clerk of this Court.

And I further certify that Thomas J. Johnston, Esq., appeared for complainants, and no one appeared for respondents.

And I further certify that I am not of counsel or attorney to any of the parties nor interested in the event of the cause.

In witness whereof I have hereunto set my hand this twentieth day of April, 1892.

JOHN L. HUNTER, *Special Examiner of the Circuit Court of the United States, District of Massachusetts.*

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

THUM ET AL *v.* ANDREWS ET AL.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

Personally appeared before me, an officer duly entitled to administer oaths, Thomas J. Johnston, who, being duly sworn, deposes and says, that upon the fourteenth day of April, 1892, he enclosed

in an envelope a copy of the within notice, and addressed the envelope as follows:

JOHN M. PERKINS,
31 *Cornhill, Boston, Mass.*

And that thereupon he did deposit the same in the United States registered mail, having first prepaid the postage thereon.

THOMAS J. JOHNSTON.

Sworn and subscribed before me, this fifteenth day of April, 1892.

[SEAL] JOHN G. STETSON,
U. S. Commissioner.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

THUM ET AL *v.* ANDREWS ET AL.

JOHN M. PERKINS, Esq.,
31 *Cornhill, Boston, Mass.*

You will please take notice that on Thursday, the twenty-first day of April, 1892, beginning at ten o'clock in the forenoon, in the city of Hartford, and State of Connecticut, I shall proceed to take the testimony of W. K. Chaffee and other witnesses on the part of the complainants in rebuttal.

Such testimony will be taken before Mr. Lewis E. Stanton, a special examiner of this court, at his office in said town, and will be taken according to the sixty-seventh Equity Rule as amended.

You are invited to attend and cross-examine.

THOMAS J. JOHNSTON,
Solicitor for Complainants.

APRIL 14, 1892.

CIRCUIT COURT OF THE UNITED STATES.

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 2893.

OTTO AND WILLIAM THUM,

v.

JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. BULLARD and WILLIAM A. DOLE, *trading under the name and style of* JOHN A. ANDREWS & CO.

Depositions taken by and before Lewis E. Stanton, Notary Public and Special Examiner, according to the sixty-seventh Equity Rule, as amended, pursuant to prefixed notice.

HARTFORD, April 21, 1892.

Commission met pursuant to notice. Present, Thomas J. Johnston, Esq., counsel for complainants. No appearance for respondents.

DEPOSITION OF WILLIAM R. CHAFFEE.

W. R. Chaffee, a witness produced on the part of the complainants in rebuttal, being first duly sworn, deposes as follows: —

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. Age, thirty-eight; occupation, druggist; residence, 370 Asylum Street, Hartford, Conn.; name, William R. Chaffee.

Int. 2. Please state how long you have been in business.

Ans. Two years the first of May.

Int. 3. You were in business here in 1878 and 1879, were you not?

Ans. Yes, working for other people.

Int. 4. Are you acquainted with the fly-paper trade?

Ans. Yes.

Int. 5. Are you acquainted with the product made by Messrs. O. & W. Thum, known in the market as Tanglefoot sticky fly-paper?

Ans. Yes.

Int. 6. Did you ever, before that product came to your notice, see on the market here any sticky fly-paper having a wax sealing border?

Ans. No, I did not.

Int. 7. If such paper had been on the market do you think you would have known of it?

Ans. Well, not necessarily; I might have seen it.

Int. 8. In your opinion would you have been likely to know of it?

Ans. Yes, I think so. WM. R. CHAFFEE.

DEPOSITION OF CHARLES A. RAPELYE.

Mr. Charles A. Rapelye, a witness produced on the part of complainants in rebuttal, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. Age, forty-three; occupation, druggist; residence, 97 Washington Street, Hartford, Conn.; name, Charles A. Rapelye.

Int. 2. Please state how long you have been in business?

Ans. About twenty-five years in the business.

Int. 3. Are you acquainted with the product made by Messrs. O. & W. Thum, known to the trade as Tanglefoot sticky fly-paper.

Ans. I am.

Int. 4. Did you ever, before that came to your notice, see on the market here any sticky fly-paper having a wax sealing border?

Ans. No.

Int. 5. Do you think if such paper had been on the market you would have seen it or known of it?

Ans. I should.

Int. 6. Did you ever, before that paper came to your attention,

see on the market here any sticky fly-paper having a wax sealing border?

Ans. I have no recollection of ever seeing anything but Thum's paper up to this time.

Int. 7. If such paper had been sold here before Thum put his on the market would you have known of it?

Ans. Yes.

CHAS. A. RAPELYE.

DEPOSITION OF EDWARD C. FRISBIE.

Mr. Edward C. Frisbie, a witness produced on the part of the complainants in rebuttal, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. Name, Edward C. Frisbie; residence, 136 Collins Street, Hartford, Conn.; age, forty; occupation, wholesale druggist; have been in business as clerk and proprietor for twenty-three years.

Int. 2. Of what firm are you a member?

Ans. Of Talcott, Frisbie & Co.

Int. 3. Are you acquainted with the trade in sticky fly-paper?

Ans. I am.

Int. 4. Are you acquainted with the product of Messrs. O. & W. Thum, known in the market as Tanglefoot sticky fly-paper?

Ans. I am.

Int. 5. Did you ever, before that paper came to your attention, see on the market here any sticky fly-paper having a wax sealing border?

Ans. I have no recollection of ever seeing anything but that up to this time.

Int. 6. If such a paper had been sold here before Thum put his on the market would you have known of it?

Ans. Yes.

EDWARD C. FRISBIE.

DEPOSITION OF CHARLES S. WILLIAMS.

Mr. Charles S. Williams, a witness produced on the part of the complainants in rebuttal, deposes as follows:

Direct Examination by THOMAS J. JOHNSTON, Esq., *of Counsel for Complainants.*

Int. 1. State your name, age, residence and occupation.

Ans. Name, Charles S. Williams; age, forty-five years; residence, Hartford, Conn.; occupation, wholesale druggist.

Int. 2. Of what firm are you a member?

Ans. Williams & Carleton, wholesale druggists.

Int. 3. How long have you been in business?

Ans. As a firm twelve years, individually twenty years, and the firm to which this succeeds about forty years.

Int. 4. Are you acquainted with the trade in sticky fly-paper?

Ans. Yes, thoroughly.

Int. 5. Are you acquainted with the product made by Messrs. O. & W. Thum, known in the trade as Tanglefoot sticky fly-paper?

Ans. Yes.

Int. 6. Did you ever, before that came to your notice, see any sticky fly-paper having a wax sealing border?

Ans. No.

Int. 7. If such a fly-paper had been on the market here would you have known of it?

Ans. Yes, probably.

Int. 8. In your opinion which is the best fly-paper, that made with the sealing border or that not so made?

Ans. That with the sealing border.

Int. 9. Please state why you think so.

Ans. As it prevents the escape of the preparation and also makes an air-tight package.

CHAS. S. WILLIAMS.

I, Lewis E. Stanton, special examiner of the Circuit Court of the United States, for the District of Massachusetts, do hereby certify that on Thursday, the twenty-first day of April, 1892, at ten o'clock in the forenoon, I was attended by the witnesses, William R. Chaffee, Charles A. Rapelye, Edward C. Frisbie, and Charles S. Williams, who, being by me first cautioned and sworn to tell the truth, the whole truth and nothing but the truth, did depose and say, as by the depositions hereunto prefixed doth fully appear.

And I further certify that I was attended by Thomas J. Johnston, Esq., as counsel for complainants, and that no counsel appeared for respondents, and I further certify that the said depositions were by me retained, after having been duly signed by the witnesses to be by me sealed up and directed to the clerk of this court, and that they were reduced to writing in my presence by a stenographer, and afterward transcribed in type-writing under my direction.

And I further certify that I am not of counsel nor attorney to any of the parties nor interested in the event of the cause.

In testimony whereof I have hereunto set my hand and seal at Hartford, Connecticut, this twenty-first day of April, 1892.

LEWIS E. STANTON, *Special Examiner.*
United States Circuit Court, District of Massachusetts,
[SEAL] *and Notary Public for State of Connecticut.*

EXHIBITS.

COMPLAINANTS' EXHIBIT, THUM PATENT NO. 1, J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 32.]

THE UNITED STATES OF AMERICA.

No. 278,294.

To all to whom these presents shall come:

Whereas Otto Thum, of Grand Rapids, Michigan, has presented to the Commissioner of Patents a petition praying for the grant of Letters Patents for an alleged new and useful improvement in fly-paper, a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law.

Now therefore these Letters Patent are to grant unto the said Otto Thum, his heirs or assigns, for the term of seventeen years from the twenty-second day of May, one thousand eight hundred and eighty-three, the exclusive right to make, use and vend the same invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-second day of May in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and seventh.

[SEAL] M. L. JOSLYN,

Acting Secretary of the Interior.

Countersigned,

E. M. MARBLE, *Commissioner of Patents.*

[MEMORANDUM. The specification and drawings of Letters Patent No. 278,294, granted to Otto Thum, May 22, 1883, for fly-paper, are here annexed, but the same being found in this printed record on pages 175 to 177, inclusive, are not here reproduced. JOHN G. STETSON, *Clerk.*]

COMPLAINANTS' EXHIBIT THUM PATENT NO. 2, J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 32.]

THE UNITED STATES OF AMERICA.

No. 305,118.

To all to whom these presents shall come:

Whereas Otto Thum, of Grand Rapids, Michigan, has presented to the Commissioner of Patents a petition praying for the grant of Letters Patent for an alleged new and useful improvement in the manufacture of fly-paper, a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and,

Whereas upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law.

Now therefore these Letters Patent are to grant unto the said Otto Thum, his heirs or assigns, for the term of seventeen years from the sixteenth day of September one thousand eight hundred and eighty-four, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this sixteenth day of September in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth.

M. L. JOSLYN,
Acting Secretary of the Interior.

[SEAL]

Countersigned,
R. G. DYRENFORTH,
Acting Commissioner of Patents.

[MEMORANDUM. The specification and drawings of Letters Patent No. 305,118, granted to Otto Thum, Sept. 16, 1884, for manufacture of fly-paper, are here annexed, but the same being found in this printed record on pages 179 to 182, inclusive, are not here reproduced. JOHN G. STETSON, *Clerk.*]

Complainants' Exhibit Willson Affidavit.

(Put in evidence, page 95.)

Affidavit of J. W. F. Willson.

(Filed Nov. 13, 1891.)

Know all men, that I, J. W. F. Willson of Boston, county of Suffolk, Commonwealth of Massachusetts, on oath depose and say that to the best of my belief the following statement and claims are true:

First. I claim I am the original inventor and first producer of the so-called sticky fly-paper, and have continued the manufacture and sale of the same since the year 1845.

Second. I claim to have used the inventions, now patented by Otto Thum, years before any such claims were set up, and stand ready to produce ample testimony, by scores of employees and other competent witnesses, to these facts.

Third. I claim I can produce the rollers, forms, presses and moulds for both the spreading of the sticky plaster and the fixing on of the wax border, also the mechanics who made the same.

Fourth. I claim that the method of applying one single sheet of paper to one other single sheet of paper, with the material spread on one surface only (claimed by Otto Thum as his invention), has been my custom for utilizing torn double sheets for the last forty years, and was the original method used by me.

Fifth. I claim the border of wax is not original with Thum or myself, but has been the common practice for many years among apothecaries, and full instruction for use and application of such border can be found in the old as well as the modern dispensatories, under the head of plasters and blisters, directing that a border of sticking plaster, the same being a compound of resin, wax and tallow (the same used by Thum), to be placed around as a margin or border; this margin is less sticky than the plaster, but becomes adhesive by heating (same will apply to Thum patent border), and the probability is Thum obtained the suggestion from this source, as I did. Thum uses the same compound of wax, resin and tallow as a margin or border, for the same purpose directed in the dispen-

satories, viz., to keep the sheets in position, and to prevent running or oozing.

Among the many methods for confining the sticky compound in the manufacture of sticky fly-paper used by me are the following:

At one time I glued the edges of the paper (after being spread with the sticky compound) all around to the width of one-half inch. I had a black line printed around each sheet inside the glued margin, indicating where the sheet was to be cut by scissors, or other means; this would allow the sheets to be separated readily.

Another method used was this: I took twenty or more sheets and confined them with a thin metal binding in a similar manner to cheap maps, show-cards, or pictures, clamping them down so as to prevent oozing.

Before this, I had a press made, with forms. I took a dozen or more sheets at a time, and stuck them up by the press in dish form, for the before-mentioned purpose.

All these methods before either of Otto Thum's patents were allowed.

J. W. F. WILLSON.

SUFFOLK, *ss:*

BOSTON, MASS., *Nov.* 11, 1891.

Before me personally appeared J. W. F. Willson, and made oath that the above statement by him subscribed is true.

[SEAL.] JOHN M. PERKINS,
Notary Public.

COMPLAINANTS' EXHIBIT SNELL LETTER, J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 123.]

SNELL, HEITSHU & WOODARD COMPANY,
IMPORTING AND WHOLESALE DRUGGISTS.

PORTLAND, OREGON, Feb. 22, 1892.

MESSRS. O. & W. THUM, *Grand Rapids, Mich.*

Dear Sirs, — Referring to your favor of the 16th inst. we beg to say that your Tanglefoot Fly-paper is the only fly-paper that is sold in this market to any extent, and the only one thus far that has given unqualified satisfaction. As you will find from your books, our sales of the paper are increasing every year, and as long as the paper is kept up to its present high standard there is no reason why still larger business should not be done in it year by year.

Yours very truly,

SNELL, HEITSHU & WOODARD CO.,
J. S. HEITSHU, *Treasurer.*

COMPLAINANTS' EXHIBIT IRVIN LETTER, J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 123.]

W. A. IRVIN. O. C. IRVIN, M. D.

W. A. IRVIN & CO.,
WHOLESALE AND RETAIL DRUGGISTS AND STATIONERS,
PAINTS, OILS AND WINDOW GLASS.

EL PASO, TEXAS, Feb. 23, 1892.

MESSRS. O. & W. THUM, *Grand Rapids, Mich.*

Gentlemen, — Yours 17th received, and will say that we will handle nothing in sticky fly-paper during the coming season but yours, which was demonstrated to us last season by handling another during the first of the season. We have four cases of yours in stock, which is O. K., and will reorder when needing more.

Yours, etc.,

W. A. IRVIN & CO.

COMPLAINANTS' EXHIBIT NOYES LETTER, J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 123.]

DANIEL R. NOYES.
CHARLES P. NOYES.
EDWARD H CUTLER.

NOYES BROTHERS & CUTLER,
WHOLESALE DRUGGISTS,
400, 402, 404, 406, 408 AND 410 SIBLEY ST., COR. 6TH.

Dictated by

ST. PAUL, MINN., Feb. 20, 1892.

MESSRS. O. & W. THUM, *Grand Rapids, Mich.*

Gentlemen, — We are in receipt of your favor of the 18th inst., and contents noted. We are not in the habit of giving testimonials for any proprietary articles that we handle, but we should be disposed to make an exception in your case, if any, as we appreciate the treatment we have received at your hands, and also recognize the exceptional merits of your paper. Of this of course we judge mainly by the sales; but after all this is, we think, the best test that there is. We see that our sales for 1891 were considerably more than double those for 1890. You will notice last year we sold about 3,500 boxes. We wish you success with your "booklets", and trust that we may sell much more paper for you during 1892 than in 1891 even. Yours truly,

NOYES BROTHERS & CUTLER.

COMPLAINANTS' EXHIBIT SMITH LETTER, J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 123.]

SMITH, KLINE & FRENCH CO.,
WHOLESALE DRUGGISTS,
429-431 ARCH STREET,
P. O. Box 1631.

WAREHOUSE, 513 COMMERCE STREET,
Laboratory and Mill, 305-307 *Cherry Street.*

Dictated.

PHILADELPHIA, Feb. 11, 1892.

MESSRS. O. & W. THUM, *Grand Rapids Mich.*

Gentlemen, — Replying to yours of the 8th inst. our demand for Tanglefoot sticky fly-paper has increased from year to year, and last season our sales exceeded by far any we have ever had.

We rarely now have orders for any other brand of sticky-fly paper. Yours truly,

SMITH, KLINE & FRENCH CO.,
M. N. KLINE, *Treasurer.*

COMPLAINANTS' EXHIBIT McDOWELL LETTER NO. 1.
J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 123.]

H. McDOWELL. H. H. WATSON.

H. McDOWELL & CO.,
WHOLESALE AND RETAIL DRUGGISTS.

P. O. Box 8.

VANCOUVER, B. C., March 5, 1892.

MESSRS. O. & W. THUM, *Grand Rapids:*

Gentlemen, — Enclosed find order for fifty cases "Tanglefoot", which please forward early in May on terms of yours March 18, 1891.

You will notice we have doubled our order of last season, which is pretty good evidence of the satisfaction we have had in handling "Tanglefoot", it having practically driven all other fly-papers out of the market.

If you will send us a couple of electrotypes, we will use them as before in our advertisements to our mutual advantage.

Yours respectfully,

H. McDOWELL & CO.

COMPLAINANTS' EXHIBIT McDOWELL LETTER, NO. 2,
J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 123.]

H. McDOWELL. H. H. WATSON.

H. McDOWELL & CO.,
WHOLESALE AND RETAIL DRUGGISTS.

P. O. Box 8.

VANCOUVER, B. C., March 5, 1892.

MESSRS. O. & W. THUM, *Grand Rapids:*

Gentlemen, — Please ship us about May 1st 50 cases 500 boxes, "Tanglefoot" Fly Paper.

Yours respectfully,

H. McDOWELL & CO.

COMPLAINANTS' EXHIBIT LEGGETT LETTER NO. 1. J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 123.]

Established 1854. E. HOWARD LEGGETT. CLINTON H. LEGGETT.
TELEPHONE CORTLAND, 207.

LEGGETT & BROTHER,
Manufacturers, Importers & Dealers,
DRUG & PAINT SPECIALTIES,
GLUE, &c.,
No. 301 PEARL ST.

NEW YORK, Feb. 15, 1892.

MESSRS. O. & W. THUM, *Grand Rapids, Mich.*

Gentlemen, — As per your request, we are pleased to hand you the enclosed testimonial for Tanglefoot, and trust it may be such as you would wish. Should you desire, however, to make any slight changes in it, please do so, as we can hardly express ourselves too strongly in its favor. Yours truly,

LEGGETT & BRO.

COMPLAINANTS' EXHIBIT LEGGETT LETTER NO. 2, J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 123.]

Established 1854. E. HOWARD LEGGETT. CLINTON H. LEGGETT.
TELEPHONE, CORTLAND, 207.

LEGGETT & BROTHER,
Manufacturers, Importers & Dealers,
DRUG & PAINT SPECIALTIES,
GLUE, &c.,
No. 301 PEARL ST.

NEW YORK, Feb. 15, 1892.

MESSRS. O. & W. THUM, *Grand Rapids, Mich.*

Gentlemen, — Having sold many thousand cases of Tanglefoot Fly Paper, we feel both competent and pleased to testify as to its merits. We consider it to be the best by all odds. In fact, it has no equal, it is clean, reliable, sells well, never spoils winter or summer, and gives universal satisfaction. We see no reason why our sales should not increase in the future as in the past.

Yours truly,

LEGGETT & BROTHER.

COMPLAINANTS' EXHIBIT LETTER, J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 128.]

THE SPIDER WEB
STICKY FLY PAPER.
"Will you walk into my Parlor?"
[Cut representing Spider's Web.]
Contains no Poison.
MANUFACTURED BY THE
NATIONAL FLY PAPER CO.,
CINCINNATI, O.

TRADE MARK REGISTERED.

THE NATIONAL FLY PAPER CO.
[*Incorporated*]
MANUFACTURERS OF
SPIDER WEB STICKY FLY PAPER.
[On both Manila and Parchment Paper.]
OFFICE AND SALESROOM, No. 14 MAIN STREET,

CINCINNATI, May 5th, 1890.

MESSRS. O. & W. THUM, *Grand Rapids, Mich.*

Dear Sirs, — As promised in our former letter, we herewith let you know the results of submitting your letter to our attorney. He advises us that without having gone fully into the subject it appears that your patent covers the packing of fly-paper in two separate sheets. We had, at the beginning of the year, intended to make our parchment in that manner, but had about determined to use the folded sheet, when we received your letter. As we said we do not intend, or desire to infringe your rights and will not do so. Trusting we may receive your reply and that this may be satisfactory, we are Very truly yours,

THE NATIONAL FLY PAPER COMPANY,
J. G. TOMPKINS, *Treasurer.*

COMPLAINANTS' EXHIBIT PERKINS LETTER. J. G. S., EX'R.

[PUT IN EVIDENCE, PAGE 128.]

OFFICE OF
J. McC. PERKINS,
COUNSELOR AT LAW.
SPECIALTY: Patent Law and Patent Office Practice.

BOSTON, Aug. 29, 1890.

MESSRS. O. & W. THUM, *Grand Rapids, Mich.*

Gents, — Clients of mine for whom I have done patent business in years gone by have requested me to communicate with you touching your patented sticky fly-paper. From the showing made to me I think it will be for your interest to have an interview with these

parties, and at an early date as is possible. The matter certainly touches your patent in a vital point. I can hardly commit more to writing until I hear from you.

Very respectfully,

J. McC. PERKINS,

(Mail at present to) 25 UNION ST., BOSTON, MASS.

DEFENDANTS' EXHIBIT FILE WRAPPER AND CONTENTS, THUM PATENT NO. 278,294.

[PUT IN EVIDENCE, PAGE 98.]

DEPARTMENT OF THE INTERIOR.

UNITED STATES PATENT OFFICE.

To all Persons to whom these Presents shall come, GREETING:

This is to certify that the annexed is a true copy from the Records of this Office of the File Wrapper and Contents in the matter of the Letters Patent granted Otto Thum May 22, 1883 Number 278,294 for Improvement in Fly-Paper.

In testimony whereof I, W. E. Simonds Commissioner of Patents, have caused the Seal of the Patent Office to be affixed this 5th day of October, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

[SEAL] W. E. SIMONDS

Commissioner.

To the Commissioner of Patents:

Your petitioner Otto Thum residing at Grand Rapids in the county of Kent and State of Michigan pray that Letters Patent may be granted to him for the improvement in Fly Paper set forth in the annexed specification, and he hereby appoints Ellis Spear, of Washington, D. C., his Attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

OTTO THUM

SPECIFICATION.

To all whom it may concern:

Be it known that I Otto Thum, a citizen of the United States and resident of Grand Rapids in the County of Kent and State of Michigan have invented a new and useful improvement in Fly Paper and I do hereby declare that the following is a full, clear and exact description of the same.

Sticky Fly Paper as ordinarily manufactured consists of a sheet of sized paper coated with an adhesive mixture of resin and caster oil, a margin being left uncoated for convenience in separating the sheets. The coated sheets are in some cases folded centrally with the coated sides inward and in lots of from 20 to 100 packed in boxes for the trade.

In warm weather the adhesive coating loses its consistency, softens and runs freely; and its tendency to spread is greatly increased by the pressure of the sheets packed closely together; the result being that the coating is pressed out over the uncoated margin & exudes between the sheets, soiling and sticking them together and rendering them practically unsalable. For this reason large quantities of fly paper cannot be kept on hand, since the demand for it is seldom uniform, and unless sold at once it spoils and remains on the dealers hands.

My invention relates to an improved method of making & packing sticky fly paper, and its object is to prevent the running and spreading of the adhesive coating, under any circumstances; so that large quantities of the paper may be packed and transported without deterioration, and kept on hand.

The invention consists in surrounding the adhesive coating with material of such a nature that it will adhere slightly to an adjoining sheet, but will separate readily, for use; and when the sheets are in contact will prevent the adhesive coating from spreading.

The invention is illustrated in the accompany drawing which shows a sheet of fly paper in plan view.

In preparing my fly paper I take a sheet of sized paper A and coat the central portion B with any proper adhesive composition *a* leaving a wide margin *a'* on all sides. About twice the quantity of

adhesive material needed for one sheet is used, and the coating is preferably accomplished by suitable machinery.

Around the margin or edge of the sticky material, I place a strip or layer *a* of some composition which will adhere closely to paper but may be readily detached therefrom. This substance (preferably a resinous compound) entirely surrounds the sticky material on the sheet. Another prepared sheet is now placed face downward upon the first, and immediately becomes coated with its proper amount of adhesive material. At the same time the paper margins adheres to the band or strip *a* so that all the sticky substance is enclosed within such strip. Under these circumstances it is impossible for it to spread beyond the surrounding compound and as there is a wide margin of paper outside the strip *a* the sheets may be readily separated, while such margin is always kept clean.

I do not limit myself to any particular manner of making and coating the fly paper, nor to any certain composition for that purpose, since various means & various compounds may be employed.

When coated in this manner any number of prepared sheets may be packed together for shipment and sale, without danger of the sticky substance running or spreading ∧ at any temperature. It will of course be understood that the surrounding compound is only slightly adhesive, without any tendency to spread. The paper can be kept on hand for a long time without damage, and the advantages of my improved manner of coating the paper will be readily appreciated by both dealers in and users of the article.

Having described my invention — I claim

First. As a new article of manufacture sticky fly paper having the sticky or adhesive material surrounded completely by material which will prevent running or spreading.

Second. A sheet of sticky fly paper coated ∧ upon one side with sticky material said sticky material being surrounded by a less adhesive substance, in combination with another sheet of paper laid face downwards upon the first, substantially as described.

Third. A sheet of fly paper having a central sticky area, a surrounding narrow strip or band of material, and a blank margin

Fourth In fly paper an adhesive sticky central portion combined with a less adhesive resinous composition adapted to enclose the first.

In testimony wherof, I have signed my name to this specification, in the presence of two subscribing witnesses.

OTTO THUM

FREDERICK LOETTGERT
HUGO THUM

OATH.

COUNTY OF KENT
STATE OF MICHIGAN ss.

Otto Thum the above named petitioner being duly sworn, deposes and says that he verily believes himself to be the original and first inventor of the improvement in Fly Paper described and claimed in this application for Letters Patent; that he does not know and does not believe that the same was ever before known or used; that the invention described and claimed in said application has not to his knowledge been in public use or on sale in the United States for more than two years prior to the filing of this application for Letters Patent and that the invention has not been patented by him nor with his knowledge, or consent, in any country; that he is a citizen of the United States, and resident of Grand Rapids, Michigan.

OTTO THUM.

Sworn to and subscribed before me this twenty third day of February A. D. 1883

[SEAL] FREDERICK LOETTGERT
Notary Public Kent Co. Mich.

3/14/83
Room No. 155
86,430.

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C. March 13, 1883.

OTTO THUM,
Care, ELLIS SPEAR,
Present.

FLY PAPER
FILED FEBRY 27, 1883.

While the claims in this case are needlessly multiplied (2 O. G. 520 & 523) there appears to be no ground for allowance of a patent.

This method is one commonly practised by pharmacists, see pp. 520–521 of Mohr, Redwood & Proctors Pharmacy, 1849, and fig. 485, and foot of page 490 with first two lines of p. 491 of Parrish's Pharmacy 1856 showing the "adhesive" margin to be like applicant's "a resinous compound" The case is rejected.

THOMAS ANTISELL,
Examiner.

Littlewood, Asst. Exr.

To the Commissioner of Patents:

In the matter of the application of Otto Thum for a patent for Fly Paper filed Feby 27, 1883

Insert before the claims

I am aware that in medical practice a plaster of a non adhesive or slightly adhesive nature, for bodily wear, has been surrounded with a highly adhesive margin to insure its sticking to the body, and as my construction is different and could not be applied to plasters, I desire to disclaim the method alluded to as forming any part of my invention.

Erase all the claims & insert

(1) A sheet of sticky fly paper having its central portion covered with some highly adhesive composition surrounded by a strip of less adhesive material, the sheet being so prepared for the purpose set forth.

In a

(2) ∧ sheet of fly paper a central portion covered with some highly adhesive composition, a strip of less adhesive material surrounding the same and an outer margin of blank paper.

Respectfully,
OTTO THUM
by ELLIS SPEAR, *Attorney.*

WASHINGTON, D. C. 2 Mar, 1883

3-31/83
Room No. 155
86,430

DEPARTMENT OF THE INTERIOR

UNITED STATES PATENT OFFICE
WASHINGTON, D. C. March 30, 1883.

OTTO THUM,
Care ELLIS SPEAR,
Present.

FLY PAPER
FILED FEBRY 27, 1883.

The references cited still anticipate the claims presented. The uses to which the plaster is applied do not render the manner of construction novel, and so long as this mode of making the margin is old, though "for bodily wear", forming fly-plasters or papers either upon the same machine or by the same mode is simply double use.

THOMAS ANTISELL
Examiner.

LITTLEWOOD, *Asst Examiner.*

To the Commissioner of Patents

In the matter of the application of Otto Thum for patent for Fly Paper filed Feby 27, 1883 ⁵86430

Erase claims and insert

A sheet of fly paper partially covered with a sticky composition, the latter being surrounded with a band or margin of less, but still slightly adhesive, material.

Respectfully
OTTO THUM
by ELLIS SPEAR *Attorney*

WASHINGTON D. C. April 4, 1883

Issue Division. *Serial No.* 86430

All communications should be addressed to
"The Commissioner of Patents,
Washington, D. C."

DEPARTMENT OF THE INTERIOR.

U. S. PATENT OFFICE,
WASHINGTON, D. C., Apl. 12, 1883.

OTTO THUM
℅ E. SPEAR
City.

Sir:—Your APPLICATION for a patent for an IMPROVEMENT IN FLY-PAPER Filed Feby 27, 1883, has been examined and ALLOWED.

The final fee, TWENTY DOLLARS, must be paid, and the Letters Patent bear date as of a day not later than SIX MONTHS from the time of this present notice of allowance.

If the final fee is not paid within that period the patent will be withheld, and your only relief will be by a renewal of the application, with additional fees, under the provisions of Section 4897, Revised Statutes. The Office aims to deliver patents upon the day of their date, and on which their term begins to run; but to do this properly applicants will be expected to pay their final fees at least TWENTY DAYS prior to the conclusion of the six months allowed them by law. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will consume the intervening time, and such work will not be done until after payment of the necessary fees.

When you send the final fee you will also send, DISTINCTLY AND PLAINLY WRITTEN, the name of the INVENTOR and TITLE OF INVENTION AS ABOVE GIVEN, DATE OF ALLOWANCE, (which is the date of this circular,) DATE OF FILING, and, if assigned, the NAMES OF THE ASSIGNEES.

If you desire to have the patent issue to ASSIGNEES, an assignment containing a REQUEST to that effect, together with the FEE for recording the same, must be filed in this Office on or before the date of payment of final fee.

Additional copies of Specifications and Drawings will be charged for at the following rates: Single Copies, uncertified, 25 cents; twenty copies or more, 10 cents each. The money should accompany the order.

Very respectfully,

E. M. MARBLE,
Commissioner of Patents.

IN REMITTING THE FINAL FEE GIVE THE SERIAL NUMBER AT THE HEAD OF THIS NOTICE.

The within title is that given by the Examiner in charge, as most appropriate to your invention. Should you desire a change in the same, satisfactory reasons MUST be given therefor on or before the payment of the final fee.

MEMORANDUM OF FEE PAID AT U. S. PATENT OFFICE.

(Be careful to give correct Serial No.)
Serial No. 86,430, 1880.
Inventor: Otto Thum
Patent to be issued to Inventor
Name of invention, as allowed: Fly Paper
Date of payment: May 3" 1883
Fee: Twenty Dollars
Date of filing:
Date of circular of allowance: April 12–1883
The Commissioner of Patents will please apply the accompanying fee as indicated above.
Ellis Spear Attorney.
Send patent to Joyce & Spear Washington D C.

Seriel No. $\frac{86430}{13}$ 1883 Exr Book No.

Patent No. 278,294

Otto Thum

Of Grand Rapids
County of Kent
State of Michigan
Invention Fly Paper

Parts of application filed:
- Petition Feb. 27, 1883
- Affidavit " " "
- Specification " " "
- Drawing " " "
- Model } not required
- Specimen }
- First fee Cash $15, Feb. 27, 1883
- " " Cert.

App. filed complete Feb. 27, '83
Examined April 10, 1883 Thomas Antisell
Countersigned: J. W Babson
April 11, 83 for Commissioner

Notice of allowance April 12, 1883
Final fee Cash $20. May 3, 1883
" " Cert. 188
Patented May 22, 1883
Atty or P. O. Address

ELLIS SPEAR Present

1883

CONTENTS:

Application papers.
1 Rejected March 13, 1883
2
3 Rejected March 30, 1883
4

167. MEDICINES.

INSECTICIDES.

TITLE:

Improvement in Fly-paper

A. M. P.
M. C. L.

[MEMORANDUM. The specification and drawings of Letters Patent, No. 278,294, granted to Otto Thum, May 22, 1883, for Fly-Paper, are here annexed, but the same being found in this printed record on pages 175 to 177, inclusive, are not here reproduced.
JOHN G. STETSON, *Clerk*.]

DEFENDANTS' EXHIBIT FILE WRAPPER AND CONTENTS. THUM PATENT No. 305,118.

[PUT IN EVIDENCE, PAGE 98.]

DEPARTMENT OF THE INTERIOR.

UNITED STATES PATENT OFFICE.

To all Persons to whom these Presents shall come, GREETING:

This is to certify that the annexed is a true copy from the Records of this Office of the File Wrapper and Contents in the matter of the

Letters Patent granted Otto Thum September 16, 1884 Number 305,118 for Improvement in Manufacture of Fly Paper

In testimony whereof I, W. E. Simonds Commissioner of Patents, have caused the Seal of the Patent Office to be affixed this 5th day of October, in the year of our Lord one thousand eight hundred and Ninety one, and of the Independence of the United States the one hundred and sixteenth

[SEAL] W. E SIMONDS

Commissioner.

To the Commissioner of Patents:

Your petitioner Otto Thum a citizen of The United States residing at the City of Grand Rapids County of Kent and State of Michigan prays that letters patent may be granted to him for the machine for preparing adhesive fly paper described and claimed in the annexed Specification; And hereby appoints Edward Taggart of the City of Grand Rapids aforesaid his Attorney with full power of substitution and revocation to prosecute this application to make alterations and amendments therein to receive the patent and to transact all business in the Patent Office connected therewith.

OTTO THUM.

To all whom it may concern

Be it known that I, Otto Thum of the City of Grand Rapids in the County of Kent and State of Michigan, have invented a new and useful machine for spreading adhesive mixture on strips of paper for the purpose of making adhesive or sticky fly paper, of which the following is a specification:

Erase & Insert 1st

My invention relates to the machine for applying the adhesive compound to paper by means of revolving cylinders and rollers, and its objects are to produce a cheaper article of merchandise than is now in use, and to so apply the adhesive compound to strips of paper as to leave both margins and cross sections at regular intervals free from the compound.

Erase & Insert 2d

I attain these objects by means of the mechanism illustrated in the accompanying drawings in which

Figure 1. is an end view of the cylinders and rollers which I use in applying the adhesive compound to the paper.

Figure (2.) is one of the cylinders, which is used to apply the compound to the paper, detached and shown in perspective.

Figure (3.) is a section of one of the spokes of the cylinder shown by Fig. (2.) and

Figure (4.) shows a double strip of paper after it has passed through the machine.

Similar letters refer to similar parts throughout the several views.

In Fig. (1.), C and C′ represent two cylinders each having an opening or slot on one side extending of uniform width the entire length of the cylinders, as fully shown in Fig. "2" by *a*. When the machine is in use the lower part of the cylinders C and C′ are immersed in the liquid adhesive ~~compound.~~ Above the cylinders C and C′, are placed two rollers, *b* and *b′*, and also in the position shown the small roller X. The opening or slot, *a*, is preferably made by cutting out a narrow strip the entire length of the cylinder, as shown in the drawings, but a depression may be made to take its place. Fig. (3) is designed to show the form of the spoke. It is made as small as consistent with strength the object being to prevent it from carrying the adhesive compound. In Fig. (4) S, S, show the space in the strips of paper that are not covered by the compound; and M, M, the margins.

The article prepared by my invention is what is known as adhesive or sticky fly paper.

The operation of my invention is as follows:

The paper is in long and comparatively narrow strips similar to wall paper and can be used to good advantage from rolls, and should be wide enough to extend a sufficient distance beyond the ends of the cylinders, C and C′, to leave a margin free of the adhesive compound. From one roll take one end of paper, pass it through between C and *b*, and up between *b* and *b′*, and over *b* and under X, which strip of paper is shown by *d*; from the opposite pass the strip of paper *d′* between C′ and *b′* up between *b* and *b′* and over *b* and beneath X; let the lower side of C and C′ be immersed in the adhesive compound and set the cylinders and rollers in motion and the paper will pass in the direction shown by the arrows, and the compound will be quickly and uniformly spread on the paper, leaving only the margins which project beyond the cylinders and the cross

sections, S S, free of the compound. The prepared sides of the paper as the strips come from beneath X will force each other and adhere or stick together, thus leaving it thoroughly prepared and at the same time with no exposed sticky surface. After it is thus prepared it can be cut apart at the cross sections, S and S, and be readily packed. Instead of preparing two strips of paper at once, one strip can be prepared by simply using two cylinders or rollers as C and *b* in which case the paper could be placed one strip upon the other by hand.

I am aware that adhesive or sticky fly paper is not new, but so far as I know it has heretofore been prepared by applying the adhesive compound with a brush knife or spatula in such a manner as to leave a margin at each side and each end of the sheet. The sheet was then folded in the middle, but I do not know of any machine for spreading the adhesive compound nor of any fly paper prepared in strips with clear cross sections nor have I ever seen or heard of any paper prepared for packing without folding the sheet as above described.

Having thus described my invention what I claim to have invented and desire to secure by letters patent is —

First.—The combination of the slotted cylinder C and roller *b* so arranged that the lower side of the cylinder C, being immersed in the adhesive compound will when revolved spread the compound upon the paper, substantially as described.

Second. — The combination and arrangement of cylinders C, C', rollers *b b'*, and roller X all arranged and operated substantially as described.

Third. — The method of spreading the adhesive compound upon strips of paper by passing them over cylinders revolving in the adhesive compound then between other rollers so arranged as to press the adhesive faces of the strips together substantially as described.

Fourth.—As a new article of manufacture, the adhesive fly paper with adhesive faces placed together so as to be conveniently packed without folding, substantially as described.

OTTO THUM

Witnesses:

HUGO THUM

EDWARD TAGGART.

STATE OF MICHIGAN
COUNTY OF KENT } ss.

Otto Thum the above named petitioner being duly sworn deposes and says that he verily believes himself to be the original and first inventor of the machine for preparing adhesive fly paper and the method thereof described in foregoing specification; That he does not know and does not believe that the same was ever before known or used That he is a citizen of the United States and a resident of the City of Grand Rapids County of Kent and State of Michigan, and that said invention has not been patented to him nor with his knowledge or consent in any foreign Country.

OTTO THUM.

Subscribed and sworn to before me this 3rd day of June 1882

[SEAL] EDWARD TAGGART
Notary Public Kent Co. Mich.

Room No. 42
C. L. E. July 12/82

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., July 12" 1882.

OTTO THUM,
Care EDWARD TAGGART,
Grand Rapids, Mich.

MACHINES FOR PREPARING ADHESIVE FLY PAPER
#264107, FILED JUNE 14, 1882

The 1st, 2nd and 3rd claims are fully anticipated in patents of Palmer, #87,359, of Mar. 2, 1869; J. P. Gage, #5443, of Feby. 15, 1848. The article of manufacture is not sufficiently described, and no specific composition for coating is mentioned. If it will dry or evaporate at ordinary temperatures, it would be impossible to separate the sheets when wanted for use. A fuller description of the uses and composition of the product will be required. The claims above specified are rejected. After "folding", claim 4, the words "adapted to be separated when needed for use" or an equivalent expression will free the claim of ambiguity

B. S. HEDRICK
Examiner.

ROBT. N. HEAD, *Asst. Ex'r.*

MEMORANDUM.

GRAND RAPIDS, May 1884.

HON. COMMISSIONER OF PATENTS *Washington, D. C.*

Please recognize Joyce & Spear (Chas H. Joyce & Ellis Spear) of Washington D. C. as my attorneys in the matter of my application for patent for Improvement in manufacture of Fly Paper filed June 7/82. Serial No. 64107

Respectfully

OTTO THUM

Inventor.

To the Comr of Patents:

In the matter of the application of Otto Thum for patent for Manf of Fly Paper filed June 7" 82.

Page 1 [page 163]* erase after "useful" line 5 [line 24]* through "rollers" line 11 [line 28]* and insert: — improvement in the manufacture of fly paper, and exact description of which the following is a full clear description —

My invention relates to the manufacture of what is known as "sticky fly paper —

Erase lines 17 18 and 19 page 1 [page 163, lines 33, 34]* and insert:

The invention consists in the method of applying the adhesive compound to the paper by means of rollers, and in the improved article of manufacture produced thereby. In the drawings I have shown a convenient form of apparatus for carrying my invention into effect, but I do not limit myself in this respect, and the apparatus may be changed greatly without departing from the spirit of my invention.

Page 2, line 6 [page 164, line 12]* erase "compound" and insert material, composed of a mixture of resin and castor oil. It is necessary that this compound be put on quite thick, & it must therefore be quite soft; it being kept in the required condition by the application of steam to the vessel containing the compound or other

* Matter enclosed in brackets refers to page and line of printed record.

indirect heat in any of the well known ways usually employed to fuse such compositions & keep them at a uniform consistency —

Page 2 erase lines 19–20 [page 164, lines 22, 23]*

Page 3, erase lines 23–32 inclusive and first four lines page 4 [page 165, lines 10–18]* and insert;

— But it will be obvious that instead of taking two separate sheets and placing them together as above described, one sheet with an equal number of coated spaces may be folded in the center at one of the blank spaces S, and thus produce the same effect.

The article produced thus consists of a strip or strips of paper having regular spaces at regular intervals filled with adhesive material surrounded by clear marginal spaces the coated spaces being placed together, in which condition they are transported or stored. When it is desired to use two or more sheets they are cut off at the blank spaces dividing the coated spaces, & the sheets may be readily separated by pulling them apart, the mixture not being of so adherent a nature as to prevent this.

Erase claims and insert:

1. The method hereinbefore described of spreading the adhesive compound upon strips of paper consisting in immersing rollers of a width less than the paper to be coated in an adhesive compound kept in a uniform liquid state & revolving said roller over the surface of the paper to be coated, substantially as described.

2. The method hereinbefore described of spreading adhesive compound upon strips of paper consisting in immersing rollers of a width less than the paper to be coated in the compound, revolving said rollers over the the surface of the strips, and finally pressing the coated surface of two strips together, substantially as described.

3. As a new article of manufacture the fly paper with adhesive faces placed together so as to be packed without folding and adapted to be separated when ready for use, substantially as described.

Respectfully

OTTO THUM

by JOYCE & SPEAR *Attys.*

May 20th 84.

* Matter enclosed in brackets refers to page and line of printed record.

Room 42
C. JUNE 23rd 1884.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., June 23, 1884.

OTTO THUM
Care JOYCE & SPEAR
Present.

64107. MANUFACTURER OF FLY PAPER."
FILED June 7 1882.

The oath in this case is defective in that it contains no two years clause.

B. S. HEDRICK
Examiner.

G. S. RAFTER.

To the Com'r of Patent

In the matter of the application of Otto Thum for patent for Manf of Fly Paper filed June 7th 1882 No. 64107

The oath required by Office letter of June 23 84 is herewith filed. The issue of the case is requested at once.

Respectfully

OTTO THUM
by JOYCE & SPEAR *Attys.*

To the Commissioner of Patents

In the matter of the application of Otto Thum for patent for manf of Fly Paper filed June 7th 1882 Serial No 64107.

OATH.

COUNTY OF KENT
STATE OF MICHIGAN } ss.

Otto Thum the above named petitioner being duly sworn, deposes and says that he verily believes himself to be the original sole and first inventor of the improvement in Manufacture of Fly Paper, described and claimed in the application for Letters Patent as above; that he does not know and does not believe that the same

was ever before known or used; that the invention described and claimed in said application has not to his knowledge been in public use or on sale in the United States for more than two years prior to the filing of the above named application for Letters Patent and that the invention has not been patented by him nor with his knowledge, or consent, in any country; that he is a citizen of the United States, and resident of Grand Rapids Michigan.

OTTO THUM.

Sworn to and subscribed before me, this thirtieth day of June A. D. 1884.

[SEAL] FREDERICK LOETTGERT,
Notary Public

Issue Division. *Serial No.* 64,107

All communications should be addressed to
"The Commissioner of Patents,
Washington, D. C."

DEPARTMENT OF THE INTERIOR,
U S. PATENT OFFICE,
WASHINGTON, D. C., July 9, 1884.

OTTO THUM
c/o JOYCE & SPEAR *City*

Sir: — YOUR APPLICATION for a patent for an IMPROVEMENT IN MANUFACTURE OF FLY PAPER Filed June 14 1882, has been examined and ALLOWED.

The final fee, TWENTY DOLLARS, must be paid, and the Letters Patent bear date as of a day not later than SIX MONTHS from the time of this present notice of allowance.

If the final fee is not paid within that period the patent will be withheld, and your only relief will be by a renewal of the application, with additional fees, under the provisions of Section 4897, Revised Statutes. The Office aims to deliver patents upon the day of their date, and on which their term begins to run; but to do this properly applicants will be expected to pay their final fees at least TWENTY DAYS prior to the conclusion of the six months allowed them by law. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will

consume the intervening time, and such work will not be done until after payment of the necessary fees.

When you send the final fee you will also send, DISTINCTLY AND PLAINLY WRITTEN, the name of the INVENTOR and TITLE OF INVENTION AS ABOVE GIVEN, DATE OF ALLOWANCE, (which is the date of this circular,) DATE OF FILING, and, if assigned, the NAMES OF THE ASSIGNEES.

If you desire to have the patent issue to ASSIGNEES, an assignment containing a REQUEST to that effect, together with the FEE for recording the same, must be filed in this Office on or before the date of payment of final fee.

Additional copies of Specifications and Drawings will be charged for at the following rates: Single Copies, uncertified, 25 cents; twenty copies or more, 10 cents each. The money should accompany the order.

Very respectfully,

BENJ. BUTTERWORTH,
Commissioner of Patents.

☞ IN REMITTING THE FINAL FEE GIVE THE SERIAL NUMBER AT THE HEAD OF THIS NOTICE.

The within title is that given by the Examiner in charge, as most appropriate to your invention. Should you desire a change in the same, satisfactory reasons MUST be given therefor on or before the payment of the final fee.

MEMORANDUM OF FEE PAID AT U. S. PATENT OFFICE.

(Be careful to give correct Serial No.)
Serial No. 64107, 1880.
Inventor: Otto Thum
Patent to be issued to
Name of invention, as allowed: Manufacture of Fly Paper
Date of payment: Aug. 22^{d}, 84.
Fee: $20
Date of filing: June 14″ 82
Date of circular of allowance: July 9″ 84

The Commissioner of Patents will please apply the accompanying fee as indicated above.
Joyce & Spear Attorney.
Send patent to Joyce & Spear City.

Serial No.

MEMORANDUM OF INCOMPLETE APPLICATION OF OTTO THUM.

Invention: Mach's for Preparing Adhesive Fly Paper
Petition:
Affidavit: June 9/82
Specification:
Drawing:
Fees:

Serial No. 64,107 1882. Ex'r Book No. 6032
Patent No. 305,118

Otto Thum.

Of Grand Rapids
County of Kent
State of Michigan
Invention Machines for Preparing adhesive Fly Paper

Parts of application filed.

Petition	June 7, 1882
Affidavit	" 14 "
Specification	" 7, "
Drawing	" " "
Model	none
Specimen	
First fee Cash	
" " Cert. $15,	June 7, 1882

App. filed complete June 14, 1882
Examined July 7' 1884 B. S. Hedrick
Countersigned: J. W. Babson
2 July 9, 84 For Commissioner
Notice of allowance July 9, 1884

COMPLAINANTS' EXHIBIT THUM PATENT No.1,-
LETTERS PATENT, No.278,294.
(Put in evidence, page 32.)

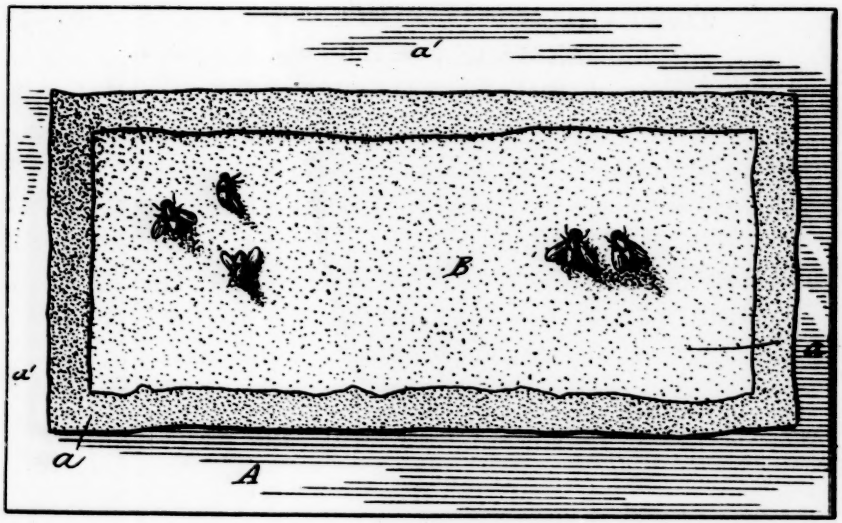
176

(No Model.)

O. THUM.

FLY PAPER.

No. 278,294. Patented May 22, 1883.



3 Final fee Cash $20 Aug 22 1884
" " Cert 188
Patented Sept 16 1884
Att'y, or P. O. address EDWARD TAGGART
JOYCE & SPEAR Grand Rapids
Present Mich.

1882.

CONTENTS:

Application papers
1.
2. Rejection July 12, 1882
3. Power of attorney May 20 1884
4. Amendment May 21 1884
5. Letter June 23 1884
6. Oath July 5 1884

92. Paper making, coating.

M. H.
L. C. G.

TITLE:

IMPROVEMENT IN MANUFACTURE OF FLY PAPER.

[MEMORANDUM. The specification and drawings of Letters Patent No. 305,118, granted to Otto Thum, September 16, 1884, for Manufacture of Fly-Paper, are here annexed, but the same being found in this printed record on pages 179 to 182, inclusive, are not here reproduced. JOHN G. STETSON, *Clerk*.]

179177

UNITED STATES PATENT OFFICE.

OTTO THUM, OF GRAND RAPIDS, MICHIGAN.

FLY-PAPER.

SPECIFICATION forming part of Letters Patent No. 278,294, dated May 22, 1883.

Application filed February 27, 1883. (No model.)

To all whom it may concern:

Be it known that I, OTTO THUM, a citizen of the United States, and a resident of Grand Rapids, in the county of Kent and State of Michigan, have invented a new and useful Improvement in Fly-Paper; and I do hereby declare that the following is a full, clear, and exact description of the same.

Sticky fly-paper, as ordinarily manufactured, consists of a sheet of sized paper coated with an adhesive mixture of resin and castor-oil, a margin being left uncoated for convenience in separating the sheets. The coated sheets are in some cases folded centrally, with the coated sides inward, and in lots of from twenty-five to one hundred packed in boxes for the trade. In warm weather the adhesive coating loses its consistency, softens and runs freely, and its tendency to spread is greatly increased by the pressure of the sheets packed closely together, the result being that the coating is pressed out over the uncoated margin and exudes between the sheets, soiling and sticking them together, and rendering them practically unsalable. For this reason large quantities of fly-paper cannot be kept on hand, since the demand for it is seldom uniform, and unless sold at once it spoils and remains on the dealers' hands.

My invention relates to an improved method of making and packing sticky fly-paper; and its object is to prevent the running and spreading of the adhesive coating under any circumstances, so that large quantities of the paper may be packed and transported without deterioration and kept on hand.

The invention consists in surrounding the adhesive coating with material of such a nature that it will adhere slightly to an adjoining sheet, but will separate readily for use, and when the sheets are in contact will prevent the adhesive coating from spreading.

The invention is illustrated in the accompanying drawing, which shows a sheet of fly-paper in plan view.

In preparing my fly-paper, I take a sheet of sized paper, A, and coat the central portion, B, with any proper adhesive composition, *a*, leaving a wide margin, *a'*, on all sides. About twice the quantity of adhesive material needed for one sheet is used, and the coating is preferably accomplished by suitable machinery. Around the margin or edge of the sticky material I place a strip or layer, *a*, of some composition which will adhere closely to paper, but may be readily detached therefrom. This substance (preferably a resinous compound) entirely surrounds the sticky material on the sheet. Another prepared sheet is now placed face downward upon the first and immediately becomes coated with its proper amount of adhesive material. At the same time the paper margins adhere to the band or strip *a*, so that all the sticky substance is inclosed within such strip. Under these circumstances it is impossible for it to spread beyond the surrounding compound, and as there is a wide margin of paper outside the strip *a* the sheets may be readily separated, while such margin is always kept clean.

I do not limit myself to any particular manner of making and coating the fly-paper, nor to any certain composition for that purpose, since various means and various compounds may be employed.

When coated in this manner any number of prepared sheets may be packed together for shipment and sale without danger of the sticky substance running or spreading at any temperature. It will of course be understood that the surrounding compound is only slightly adhesive, without any tendency to spread.

The paper can be kept on hand for a long time without damage, and the advantges of my improved manner of coating the paper will be readily appreciated by both dealers in and users of the article.

I am aware that in medical practice a plaster of a non-adhesive or slightly-adhesive nature for bodily wear has been surrounded with a highly-adhesive margin to insure its sticking to the body, and as my construction is different, and could not be applied to plasters, I desire to disclaim the method alluded to as forming any part of my invention.

Having described my invention, I claim—

A sheet of fly-paper partially covered with a sticky composition, the latter being surrounded with a band or margin of less but still slightly adhesive material.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

OTTO THUM.

Witnesses:
FREDERICK LOETTGERT,
HUGO THUM.

(No Model.)

O. THUM.

MANUFACTURE OF FLY PAPER.

No. 305.118. Patented Sept. 16, 1884.

Fig. 1

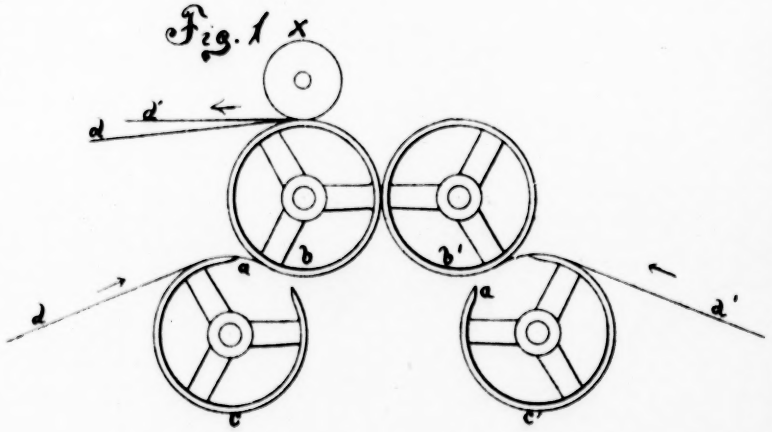


Fig. 2

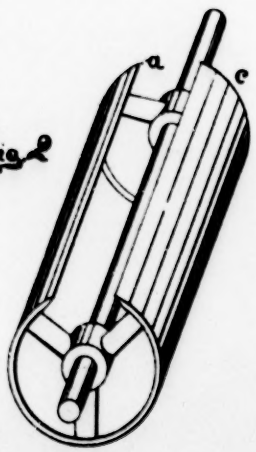
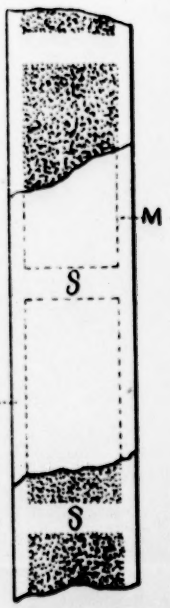


Fig. 3

Fig. 4



Witnesses:
Fred H. Stevens
Arthur C. Denison

Inventor
Otto Thum
By Edward Taggart,
his Attorney.

COMPLAINANTS' EXHIBIT THUM PATENT No.2,-
LETTERS PATENT, No.305,118.
(Put in evidence, page 33.)

UNITED STATES PATENT OFFICE.

OTTO THUM, OF GRAND RAPIDS, MICHIGAN.

MANUFACTURE OF FLY-PAPER.

SPECIFICATION forming part of Letters Patent No. 305,118, dated September 16, 1884.

Application filed June 14, 1882. (No model.)

To all whom it may concern:

Be it known that I, OTTO THUM, of the city of Grand Rapids, in the county of Kent and State of Michigan, have invented a new and useful Improvement in the Manufacture of Fly-Paper, of which the following is a full, clear, and exact description.

My invention relates to the manufacture of what is known as "sticky fly-paper," and its objects are to produce a cheaper article of merchandise than is now in use, and to so apply the adhesive compound to strips of paper as to leave both margins and cross-sections at regular intervals free from the compound.

The invention consists in the method of applying the adhesive compound to the paper by means of rollers, and in the improved article of manufacture produced thereby.

In the drawings I have shown a convenient form of apparatus for carrying my invention into effect; but I do not limit myself in this respect, and the apparatus may be changed greatly without departing from the spirit of my invention.

Figure 1 is an end view of the cylinders and rollers which I use in applying the adhesive compound to the paper. Fig. 2 is one of the cylinders, which is used to apply the compound to the paper, detached and shown in perspective. Fig. 3 is a section of one of the spokes of the cylinder shown by Fig. 2, and Fig. 4 shows a double strip of paper after it has passed through the machine.

Similar letters refer to similar parts throughout the several views.

In Fig. 1, C and C′ represent two cylinders, each having an opening or slot on one side extending of uniform width the entire length of the cylinders, as fully shown in Fig. 2 by *a*. When the machine is in use, the lower part of the cylinders C and C′ are immersed in the liquid adhesive material, composed of a mixture of resin and castor-oil. It is necessary that this compound be put on quite thick, and it must therefore be quite soft, it being kept in the required condition by the application of steam to the vessel containing the compound or other indirect heat in any of the well-known ways usually employed to fuse such compositions and keep them at a uniform consistency.

Above the cylinders C and C′ are placed two rollers, *b* and *b′*, and also in the position shown the small roller X. The opening or slot *a* is preferably made by cutting out a narrow strip the entire length of the cylinder, as shown in the drawings; but a depression may be made to take its place.

Fig. 3 is designed to show the form of the spoke. It is made as small as consistent with strength, the object being to prevent it from carrying the adhesive compound.

In Fig. 4, S S show the spaces in the strips of paper that are not covered by the compound, and M M the margins.

The operation of my invention is as follows: The paper is in long and comparatively narrow strips, similar to wall-paper, and can be used to good advantage from rolls, and should be wide enough to extend a sufficient distance beyond the ends of the cylinders C and C′ to leave a margin free of the adhesive compound. From one roll take one end of paper, pass it through between C and *b*, and up between *b* and *b′*, and over *b*, and under X, which strip of paper is shown by *d*. From the opposite pass the strip of paper *d′* between C′ and *b′*, up between *b* and *b′*, and over *b*, and beneath X. Let the lower sides of C and C′ be immersed in the adhesive compound, and set the cylinders and rollers in motion, and the paper will pass in the direction shown by the arrows, and the compound will be quickly and uniformly spread on the paper, leaving only the margins which project beyond the cylinders and the cross-sections S S free of the compound. The prepared sides of the paper as the strips come from beneath X will face each other and adhere or stick together, thus leaving it thoroughly prepared, and at the same time with no exposed sticky surface. After it is thus prepared, it can be cut apart at the cross-sections S and S and be readily packed.

Instead of preparing two strips of paper at once, one strip can be prepared by simply using two cylinders or rollers, as C and *b*, in which case the paper could be placed one strip upon the other by hand; but it will be obvious that, instead of taking two separate sheets and placing them together, as above described, one sheet with an equal number of coated

spaces may be folded in the center at one of the blank spaces S, and thus produce the same effect. The article produced thus consists of a strip or strips of paper having spaces at regular intervals filled with adhesive material surrounded by clear marginal spaces, the coated spaces being placed together, in which condition they are transported or stored. When it is desired to use two or more sheets, they are cut off at the blank spaces dividing the coated spaces, and the sheets may be readily separated by pulling them apart, the mixture not being of so adherent a nature as to prevent this.

Having thus described my invention, what I claim to have invented, and desire to secure by Letters Patent, is—

1. The method hereinbefore described of spreading the adhesive compound upon strips of paper, consisting in immersing rollers of a width less than the paper to be coated in an adhesive compound kept in a uniform liquid state, and revolving said rollers over the surface of the paper to be coated, substantially as described.

2. The method hereinbefore described of spreading adhesive compound upon strips of paper, consisting in immersing rollers of a width less than the paper to be coated in the compound, revolving said rollers over the surface of the strips, and finally pressing the coated surfaces of two strips together, substantially as described.

3. As a new article of manufacture, the fly-paper with adhesive faces placed together, so as to be packed without folding, and adapted to be separated when ready for use, substantially as described.

OTTO THUM.

Witnesses:

HUGO THUM,

EDWARD TAGGART.

Transcript of Record.

UNITED STATES OF AMERICA, *District of Massachusetts*, } ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston within and for the district of Massachusetts, on Saturday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and ninety-two.

Before the Honorable William L. Putnam, circuit judge.

OTTO THUM *et al.*, Complainants, *v.* JOHN A. ANDREWS *et al.*, Defendants. } No. 2893. Equity.

The bill of complaint in this cause was filed in the clerk's office on the twenty-seventh day of July, A. D. 1891, and was duly entered at the May term of this court, A. D. 1891, and is in the words and figures following:

Bill of Complaint.

(Filed July 27, 1891.)

(MEMORANDUM.—The bill of complaint as printed in this Transcript of Record, beginning on page 1, is here inserted.

ALEX. H. TROWBRIDGE, *Clerk.*)

At the said May term the following answer was filed:

Answer.

(Filed Sept. 14, 1891.)

(MEMORANDUM.—The answer as printed in this Transcript of Record, beginning on page 6, is here inserted.

ALEX. H. TROWBRIDGE, *Clerk.*)

This cause was thence continued to the October term, A. D. 1891, when the following replication was filed:

Replication.

(Filed Nov. 3, 1891.)

(MEMORANDUM.—The replication as printed in this Transcript of Record, beginning on page 10, is here inserted.

ALEX. H. TROWBRIDGE, *Clerk.*)

This cause was thence continued from term to term to the present October term, 1892, when publication of testimony having passed in the clerk's office, the same is set down for hearing and fully heard by the court, the Honorable George M. Carpenter, district judge of the United States for the district of Rhode Island, duly assigned to hold said circuit court, sitting.

On the twenty-eighth day of December, A. D. 1892, the opinion of the court is announced and the following rescript is filed:

Rescript.

(Filed Dec. 28, 1892.)

Let a decree be entered for an injunction and an account as prayed.

G. M. CARPENTER, *Judge.*

On the seventh day of February, A. D. 1893, the following decree is entered:

Decree for Injunction and Account.

February 7, 1893.

This cause came on to be heard at this present October term, 1892, upon the pleadings and proofs, and was argued by counsel for the respective parties; and now upon consideration thereof, to wit: Feb. 7, 1893, it is ordered, adjudged and decreed, as follows, viz., that the letters patent referred to in the complainants' bill, being letters patent of the United States, granted unto Otto Thum, upon May 22, 1883, and Sept. 16, 1884, and numbered respectively 278,294 and 305,118, for improvements in sticky fly-paper and the

manufacture thereof, are good and valid patents, and that the said Otto Thum was the original and first inventor of the improvements described and claimed therein; and that the said defendants have infringed the said patent and upon the exclusive rights of the complainants under the same.

And it is further ordered, adjudged and decreed, that the complainants recover of the defendants the profits which they have received or made, or which have accrued to them from said infringement by the manufacture, use or sale of the improvement described and secured by said letters patent, at any and all times since the issue of the said letters patent, and, in addition thereto, the damage which the complainants have sustained thereby.

And it is further ordered, adjudged and decreed, that it be referred to Walter B. Grant, Esq., a master *pro hac vice* of this court, to take and report to the court an account of the profits which the said defendants have received, or which have arisen or accrued to them from the infringement of the patented invention by unlawfully making, using or vending the same as alleged in the bill, and to ascertain and report the damages, if any, in addition to the profits, which the complainants have sustained thereby since the twenty-second day of May, A. D. 1883, as to letters patent No. 278,294, and since the sixteenth day of September, A. D. 1884, as to letters patent 305,118.

And it is further ordered, adjudged and decreed, that a perpetual injunction be issued against the defendants according to the prayer of the bill.

And it is further ordered, adjudged and decreed, that the complainants recover of the defendants their costs of suit.

By the court:

BENJ. H. BRADLEE,
Deputy Clerk.

On the tenth day of April, 1893, Messrs. Fish, Richardson & Storrow entered their appearance as counsel for the defendants.

At the present October term, the following motions are filed:

Motion to Reopen.

(Filed May 6, 1893.)

The defendants move the court that this case be reopened for the purpose of introducing for the consideration of the court the patent No. 125,326, granted to Thaddeus E. Peck on April 2, 1872, for an improvement in fly-paper. A certified copy of this Peck patent, under the seal of the United States Patent Office, is herewith filed with this motion. This Peck patent is a duplicate of the Thum patent on which this suit is brought. The Peck patent expired by legal limitation and became public property on April 2, 1889. The Thum patent was granted on May 22, 1883. This is an absolutely clear case and there is no possible chance to doubt but that both the Peck patent and the Thum patent are precisely alike in all respects. The slightest inspection of these two patents places the absolute identity of them beyond a shadow of doubt.

JOHN M. PERKINS,
For Defendants.

Motion to Dissolve Injunction.

(Filed May 6, 1893.)

The defendants move the court that the injunction against them, issued Feb. 8, 1893, be dissolved and vacated. This injunction forbids the defendants from making, using or selling the article of manufacture described in the patent granted to Otto Thum on May 22, 1883, No. 278,294, for fly-paper.

Herewith is filed, under the seal of the Patent Office of the United States, a certified copy of the patent granted to Thaddeus E. Peck, on April 2, 1872, No. 125,326, for an improvement in fly-paper. Upon the slightest inspection it will be seen that the Thum patent is a duplicate of the prior Peck patent and that the Peck patent expired by limitation and became public property on April 2, 1889.

The mode and process of manufacture, as well as the manufactured article, are precisely identical in all respects in both the Peck patent and in the Thum patent. The functions of every part of the manufactured article are exactly alike in both the Peck patent and in the Thum patent.

As the matter now stands this court has issued an injunction forbidding these defendants to do those things which the laws of the United States have granted them the definite and direct authority to do.

After these facts have been brought to the attention of this court, it seems most clearly to us that it would violate every principle of right, law and justice, and would be an assumption of illegal power for this court to continue this injunction against these defendants.

JOHN M. PERKINS,
For Defendants.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Thaddeus E. Peck and L. F. Curtis, April 2, 1892, number 125,326, for improvement in fly-paper.

In testimony whereof, I, N. L. Frothingham, acting Commissioner of Patents, have caused the seal of the Patent Office to be affixed this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

[SEAL.] N. L. FROTHINGHAM,
Acting Commissioner.

No. 125,326.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas, Thaddeus E. Peck, of Bridgeport, Connecticut, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in fly-paper (he having assigned his right, title and interest in said improvement to himsef and L. F. Curtis, of same place), a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such case made and provided; and

Whereas, upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law;

Now, therefore, these letters patent are to grant unto the said Peck and Curtis, their heirs or assigns, for the term of seventeen years from the second day of April, one thousand eight hundred and seventy-two, the exclusive right to make, use and vend the said invention throughout the United States and the territories thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this second day of April, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-sixth.

[SEAL.] B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
M. D. LEGGETT,
Commissioner of Patents.

(MEMORANDUM.—Patent Office copy of letters patent No. 125,326 to Thaddeus E. Peck, pages 191, 192 and 193, is here annexed.—JOHN G. STETSON, *Clerk.*)

125,326.

UNITED STATES PATENT OFFICE.

THADDEUS E. PECK, of Bridgeport, Connecticut, assignor to himself and L. F. Curtis, of same place.

Improvement in Fly-paper.

Specification forming part of Letters Patent No. 125,326, dated April 2, 1872.

To all whom it may concern:

Be it known that I, Thaddeus E. Peck, of Bridgeport, in the county of Fairfield and State of Connecticut, have invented a new and improved method of preparing fly-paper; and I do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawing making part of this specification, in which—

192

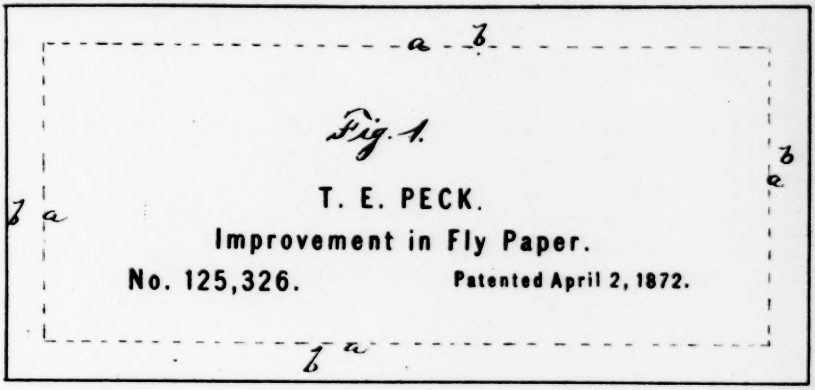


Fig. 1.

T. E. PECK.

Improvement in Fly Paper.

No. 125,326. Patented April 2, 1872.

Fig 2.

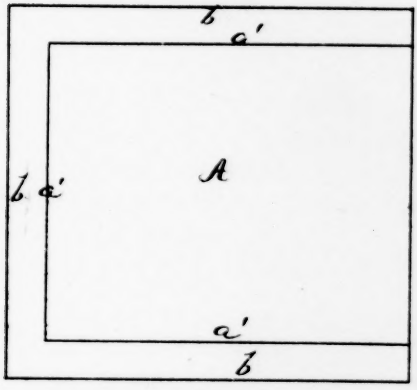


Fig 3.

Witnesses
R. T. Campbell.
J. N. Campbell

Inventor
T. E. Peck
by his Attys
Mason Fenwick & Lawrence

Figure 1 is a view of a sheet of paper which is supposed to be covered with gum within the dotted lines. Fig. 2 represents the sheet folded and its margins stuck together. Fig. 3 is a section through the folded sheet.

Similar letters of reference indicate corresponding parts in the several figures.

This invention relates to prepared paper for entrapping flies, which is coated with a soft gum or some other suitable adhesive substance which will not readily become hard by exposure to the air. The nature of my invention consists in the preparation for transportation of sheets of paper which are coated with some suitable gum or resin for catching flies, by leaving a margin of suitable width around the gum-coating, and thereafter pasting or otherwise closing these marginal edges, so as to effectually inclose the coating, and protect it from exposure during transportation; the said margins to be removed when it is desired to unfold the sheets and expose the gummed surfaces, as will be hereinafter explained.

To enable others skilled in the art to understand my invention, I will describe it.

In the accompanying drawing, A represents a sheet of paper cut in the form of an oblong square; and *a a a a* are dotted lines, which indicate the boundary of the gum spread upon the sheet to catch the flies. Outside of this dotted line is a margin, *b*, which should be coated with some suitable readily-drying cement, either before or after the said gum is spread upon the paper. The paper is then folded, as shown in Figs. 2 and 3, and its marginal edges are cemented together, thereby hermetically sealing the gummy material between the folds of the sheet. In this condition the paper can be packed in boxes and transported without liability of the soft gummy material escaping or drying.

When the paper is to be used, the marginal edges are cut off, as indicated by the lines *a'* in Fig. 2, and the sheet unfolded.

If desirable, the sheets of paper may be treated with some suitable size before the gummy material is applied to them, which will effectually exclude air from the gum which is inclosed between the sheets. I do not, however, confine myself to the use of sized sheets, nor do I confine myself to any definite shape of the sheets or manner of securing together the margin of the sheets. With the paper having its marginal edges pasted or cemented as above stated, very soft and sticky matters can be used, which could not be practically employed under the old plan of preparing fly-paper.

Having described my invention, I claim as a new article of manufacture—

Adhesive fly-paper prepared by covering a sheet of paper with a soft adhesive substance and closing the edges of the same, substantially as described.

THADDEUS E. PECK.

Witnesses:
HENRY A. LAMBERT.
JAMES C. PLANT.

At the present October term, 1892, the following rescript is filed:

Rescript.

(Filed May 13, 1893.)

Let final decree be entered as assented to by the complainants and the respondents.

G. M. CARPENTER, *J.*

And thereupon the following decree is entered:

Final Decree.

May 13, 1893.

Inasmuch as it appears that the parties have settled the money payments ordered by the interlocutory decree, it is hereby ordered, adjudged and decreed that reference to a master be waived, and that the defendants be ordered to pay to the complainants the sum of twenty-five hundred dollars as damages and profits to be recovered by the complainants of the defendants herein, and as costs of suit.

By the court:

BENJ. H. BRADLEE,
Deputy Clerk.

The foregoing decree is assented to.

THOMAS J. JOHNSTON,
Complainants' Solicitor.
FISH, RICHARDSON & STORROW,
Defendants' Attorneys.

On the fifteenth day of May, A. D. 1893, the complainants acknowledge satisfaction and discharge of the money payments ordered by the final decree in said cause.

A true record.

Attest: ALEX. H. TROWBRIDGE, *Clerk.*

UNITED STATES OF AMERICA, *District of Massachusetts*, } *ss*:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Monday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and ninety-three, before the Honorable Le Baron B. Colt, circuit judge.

OTTO THUM *et al.*, Complainants,
v.
JOHN A. ANDREWS *et al.*, Defendants. } No. 2893. Equity.

On the twenty-third day of June, A. D. 1893, this cause comes on to be heard on the motions to reopen and to dissolve injunction filed on the sixth day of May, 1893, at the October term of this court, A. D. 1893, and is fully heard before the Honorable George M. Carpenter, district judge of the United States for the district of Rhode Island, duly assigned to hold said circuit court, whereupon the court orders that the said motions be and the same are hereby denied.

A true record.

Attest: ALEX. H. TROWBRIDGE, *Clerk*.

At the October term of this court, A. D. 1893, the following prayer for appeal and assignment of errors was filed:

Prayer for Appeal and Assignment of Errors.

(Filed Nov. 17, 1893.)

Pursuant to rule 11, formulated and adopted by the United States circuit court of appeals for the first circuit, the above-named defendants and appellants respectfully make the following assignment of errors in the decisions filed on June 23, 1893, in the above-entitled cause, to wit:

The court refused to reopen this case and to dissolve the permanent injunction granted in this suit. The court erred in these decisions because the subject-matter of the Thum patents on which this suit and permanent injunction was based was completely and fully answered by the Peck patent of April 2, 1872, a copy of which

was filed with the motions which were denied by the court on June 23, 1893, as aforesaid.

The record in this case also shows that the subject-matter of the Thum patents was completely and fully described in books printed as long ago as 1849, and even books printed years before that date. The testimony on record in this case also completely shows that the subject-matter of the Thum patents was publicly used many years before the Thum patents were granted.

As this permanent injunction now stands, it prohibits the defendants from doing those things which the laws of the United States plainly grant them a right to do. If a judge of the United States can assume powers not lawfully conferred on him, then this is no longer a free government, but a despotism; and if his unlawful assumption of power is allowed to continue, under color of law, this action then becomes the action of the court which refuses to dissolve such a wrongful injunction, and justice and right are failures under our theoretically free institutions. And the defendants pray that an appeal may be allowed to the circuit court of appeals of the first circuit.

JOHN M. PERKINS,
Attorney for John A. Andrews & Co. et al., Defendants.

The above prayer for appeal and assignment of errors are made by the undersigned in the name of John A. Andrews *et al.*, defendants, in whose name the undersigned have heretofore defended this suit under due authority from them.

JOHN B. F. WILLSON.
BENJAMIN F. B. WILLSON.

This is allowed to be added to the prayer for appeal.

G. M. CARPENTER, *J.*

On the fifth day of February, A. D. 1894, the following rescript was filed:

Rescript.

(Filed Feb. 5, 1894.)

On the prayer for appeal of John W. F. Willson and Benjamin F. B. Willson, let an order be made that the appeal is allowed.

G. M. CARPENTER, *J.*

And thereupon, to wit, Feb. 5, bond on appeal being approved and citation to the complainants being signed, it is ordered that the appeal in this cause be allowed.

By the court:

ALEX. H. TROWBRIDGE, *Clerk.*

On the sixth day of February, A. D. 1894, the following protest was filed:

Protest.

(Filed Feb. 6, 1894.)

The above-named defendants, John A. Andrews, William Y. Wadleigh, B. F. Bullard and William A. Dole, respectfully protest against the allowance of an appeal in the above-entitled cause, and represent that said cause is settled and that they do not desire, nor consent to, nor authorize an appeal.

By their solicitors, FISH, RICHARDSON & STORROW.

Clerk's Certificate.

UNITED STATES OF AMERICA, *District of Massachusetts*, } ss:

I, Alexander H. Trowbridge, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record in the cause of

OTTO THUM *et al.*, Complainants,
v.
JOHN A. ANDREWS *et al.*, Defendants. } No. 2893. Equity.

in said court determined, and of the rescripts therein, the prayer for appeal and assignment of errors and of the order of court allowing the appeal therein, and the protest of defendants, John A. Andrews *et al.*, by their counsel, Messrs. Fish, Richardson & Storrow, and that annexed hereto are true copies of the opinion of the court, bond to party on appeal and the original citation on appeal, with return of service thereon, all constituting a true copy of the record and all proceedings in said cause.

In testimony whereof, I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this first day of

March, in the year of our Lord one thousand eight hundred and ninety-four and of the Independence of the United States the one hundred and eighteenth.

[SEAL.] ALEX. H. TROWBRIDGE, *Clerk.*

Opinion of the Circuit Court.

December 28, 1892.

CARPENTER, *J.:*

This is a bill in equity to enjoin an alleged infringement of letters patent No. 278,294, issued May 22, 1883, to Otto Thum, and of the third claim of letters patent No. 305,118, issued Sept. 16, 1884, to said Otto Thum. The claims alleged to be infringed are as follows, respectively:

A sheet of fly-paper partially covered with a sticky composition, the latter being surrounded with a band or margin of less but still slightly adhesive material.

3. As a new article of manufacture, the fly-paper with adhesive faces placed together, so as to be packed without folding, and adapted to be separated when ready for use, substantially as described.

The subject of this invention is a sheet of paper covered with a sticky and semi-fluid substance, in which the fly, being entangled by his feet, is hopelessly detained and finally dies. The objection to the use of this paper, as it was first prepared, was that the sticky substance flowed over the edge of the paper and injured surrounding articles, and also, when packed for transportation or sale, caused the sheets to adhere to each other so that they could not be easily and conveniently separated for use. The device adopted by this inventor was to surround the sticky substance by a margin of comparatively firm and only slightly adhesive substance, a resinous compound being preferred. As thus prepared two sheets may be placed together with the sticky surfaces in opposition, and the adhesive margins of the two will together form a dam which will hold in place the sticky substance which is the effective part of the device. This appears to be a useful invention, as the evidence discloses that paper so made is largely sold and has to a great extent displaced the less convenient article formerly in use.

The respondents do not deny that they infringe. They defend

the suit first on the ground that part of the evidence taken for the complainants should not be read, because it was taken in Washington in the District of Columbia, and they allege that the 67th equity rule and sections 863 and 864 of the Revised Statutes do not authorize the taking of testimony at any place outside the circuit in which the action is pending. The respondents have filed no brief and they have not argued this point further than to state it as above recited. I have examined the rule and the statute and am unable to see anything therein which can so limit the right to take testimony, and I am therefore constrained to hold for the purposes of this case that the testimony may be read.

The respondents further contend that the patent shows no patentable invention, in view of the methods long in use in the preparation of medicinal plasters. It appears that as early as 1849 the following directions were given for the preparation of such plasters:

"If the material of which the plaster is composed be sufficiently adhesive to insure its remaining fixed to the part of the body to which it is applied, it is spread without any previous preparation of the leather to within about half an inch of the edge, leaving a margin of this width of uncovered leather; but plasters possessing little or no adhesiveness ought to be surrounded by an adhesive margin, and in such case the margin must be prepared before spreading the plaster. There are two methods of preparing the adhesive margin; the adhesive plaster may be either spread entirely over the leather to the very edge, or it may be merely applied around the edge of the leather, so as to form a border of about an inch in width."

It does not seem to me that plasters so prepared would suggest the device of Thum, or that fly-paper prepared according to these directions would answer the purpose of the patented article. Margins or borders, of course, are old; but they serve many functions, and it must be held to be similarity of function no less than similarity of form which constitutes a double use. The adhesive margin of the plaster has no effect to confine the substance of the plaster. If the adhesive substance be "spread entirely over the leather," it is evident that no such result follows; and even it be "merely applied around the edge of the leather," the descriptions do not suggest that they should be of sufficient thickness to confine the plaster. In short, the margin of the plaster was intended

and adapted to fasten the plaster to the surface of the body and not in any degree to confine or retain the medicated substance of the plaster. Such a border does not suggest the border here patented.

The respondents further contend that sticky fly-paper precisely similar to that described in the patent was made and sold by William P. Clough and John W. F. Willson, and was sold by Merrill S. Noyes, more than two years before either of these patents was issued or applied for; and they support this allegation by the testimony of several witnesses. But the witnesses testify loosely and entirely from recollection and notably do not produce any samples of the article said to have been sold, but identify it only by their description. The witnesses Clough and Willson testify that they sold the fly-paper such as is described in the patent to certain wholesale druggists in Boston whom they name. But competent representatives of all but one of these houses entirely contradict this statement. One of these druggists, Mr. Albert C. Smith, does indeed testify, when first questioned, that he bought the article in question from Willson in the year 1878, but on further reflection he so modified his testimony that it is not possible to infer from it that the sale took place earlier than the year 1884. The evidence in support of this last contention of the respondents is thus very far from that which is required to support such a claim. I therefore conclude that the complainants are entitled to a decree.

A true copy.

Attest: ALEX. H. TROWBRIDGE, *Clerk.*

Bond to Party on Appeal.

(Filed Feb. 5, 1894.)

Know all men by these presents, that we, John W. F. Willson and Benjamin F. B. Willson, of South Boston, Mass., as principals, and Joseph B. Sharland of Boston, Mass., as surety, are held and firmly bound unto Otto and William Thum, of Grand Rapids, Mich., in the full and just sum of two hundred dollars, to be paid to the said Otto and William Thum, their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-fifth day of October,

in the year of our Lord one thousand eight hundred and ninety-three.

Whereas, lately at a circuit court of the United States for the district of Massachusetts, in a suit in equity depending in said court, between Otto and William Thum, complainants, against John A. Andrews *et al.*, as defendants, a decree was entered against the said John A. Andrews *et al.*, defendants, and the said John A. Andrews *et al.*, having obtained an appeal to remove said cause to the United States circuit court of appeals for the first circuit, to reverse the decree in the aforesaid suit, and a citation directed to the said Otto and William Thum citing and admonishing them to be and appear in the said United States circuit court of appeals for the first circuit, in the city of Boston, Massachusetts, on the first day of March, A. D. 1894:

Now, the condition of the above obligation is such, that, if the said John A. Andrews *et al.*, shall prosecute this appeal to effect, and answer all damages and costs if they fail to make this appeal good, then the above obligation to be void; else to remain in full force and virtue.

JOHN W. F. WILLSON. [SEAL.]
BENJAMIN F. B. WILLSON. [SEAL.]
JOSEPH B. SHARLAND. [SEAL.]

Sealed and delivered in presence of—

SMITH W. PERRY.
BENJ. H. BRADLEE TO J. B. S.

Approved:
G. M. CARPENTER, *J.*

A true copy.
Attest: ALEX. H. TROWBRIDGE, *Clerk.*

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Otto and William Thum, of the city of Grand Rapids, in the county of Kent, and State of Michigan, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the first circuit, in the city

of Boston, Massachusetts, on the first day of March next, pursuant to an appeal duly obtained from a decree of the circuit court of the United States for the district of Massachusetts, wherein John A. Andrews, William Y. Wadleigh, B. F. Bullard and William A. Dole, of Boston, in the State of Massachusetts, are defendants, and wherein John W. F. Willson and Benjamin F. B. Willson, of said Boston, appear as principals on the bond on appeal, in which bond said John A. Andrews *et al.* appear as appellants and you are appellees, to show cause, if any there be, why the said decree, entered against the said appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable George M. Carpenter, judge of the district court of the United States for the district of Rhode Island, duly assigned to hold said circuit court this fifth day of February, in the year of our Lord one thousand eight hundred and ninety-four.

G. M. CARPENTER, *Judge.*

UNITED STATES OF AMERICA, }
Western District of Michigan, } ss:

FEB. 21, 1894.

I hereby certify that on the twenty-first day of February, 1894, I served the within citation by showing this original writ and delivering a true copy thereof to Otto and William Thum.

CHARLES R. PRATT,
United States Marshal,
By C. E. BREWSTER, *Deputy.*

Order Enlarging Time for Docketing Case.

(Filed in clerk's office of U. S. circuit court of appeals, March 8, 1894.)

United States Circuit Court of Appeals for the First Circuit.

JOHN A. ANDREWS *et al.*, Defendants, Appellants,
v.
OTTO THUM *et al.*, Complainants, Appellees.

Order of Court.

March 5, 1894.

COLT, *J.*:

It is ordered by the court that the time for docketing the cause and filing the transcript of record herein be enlarged to the ninth day of March, A. D. 1894.

LE BARON B. COLT,
Circuit Judge.

In the United States Circuit Court of Appeals for the First Circuit.

O. & W. THUM
vs.
JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. Bullard, and William A. Dole, Trading under the Name and Style of John A. Andrews & Co. } In Equity. No. 89.

On appeal from the circuit court of the United States for the district of Massachusetts.

Motion to Dismiss Appeal.

(Filed March 20, 1894.)

Now come the appellees, complainants in the court below, and move to dismiss the appeal in the above-entitled case, for the following reasons, to wit:

1. Because the record was not filed in this court on or before March 1st, the return day of the citation.

2. Because the orders of his honor Judge Colt extending the time for the filing of the record to March 7th, 1894, at four o'clock, p. m.,

and further extending such time to March 8th, 1894, at 12 o'clock noon, were without authority of law, and are therefore void, because—

(*a*) The orders were entered after the return day of the citation, and the motion was made after the record should have been filed in the court above.

(*b*) Appellees' right to docket and dismiss under rule 16 of this court had attached, and could not be divested without a hearing.

(*c*) Said orders were entered without notice to parties or argument.

(*d*) Under the statute constituting this court, sec. 11, the rules and practice on appeal of the Supreme Court of the United States are made applicable, and the court has no authority to vary from such practice where it is established.

3. Because the parties moving for this appeal are not parties to the cause, and have no authority to appear herein.

4. Because the parties defendant, nominal appellants and necessary parties in this court, did not institute these proceedings and are not joined in the appeal or in the appeal bond.

5. Because no petition has been presented by the parties moving for this appeal praying leave of court to intervene.

6. Because no petition or order of severance has been filed in the court below.

7. Because the assignment of errors filed in this cause is based upon a patent not set up in the answer.

8. Because this appeal is an attempt to appeal from the decision of the court below refusing a rehearing, the petition for rehearing having been based upon the same patent without amending the answer; and the rehearing having been refused upon the merits and being a matter of discretion, is not subject to appeal.

9. Because upon the final decree entered in the court below, appellants in this court, defendants in the court below, are estopped to appeal, inasmuch as the decree agreed upon by stipulation has been executed, and the damages assessed by agreement have been paid in full, and such damages having been paid under a decree cannot be recovered.

10. Because the citation was not served the statutory time before the return day of the writ.

11. Because by section 7 of the act creating the circuit courts of appeals, the interlocutory decree was appealable within thirty days of its entry, and appellants elected not to appeal from the decree

granting an injunction, and, having paid the amount of the final decree, are therefore estopped.

12. Because the parties bringing this appeal have not acted in good faith and have attempted to defraud the defendants in the court below, nominal appellants in this court, in this: that they offered in writing to suppress all evidence in their possession affecting the validity of the letters patent in said hearing for a valuable consideration to be paid them by the complainants, as evidenced by the affidavits of Thomas J. Johnston and Otto and William Thum, hereunto annexed, to which affidavits and exhibits annexed appellees ask leave to refer upon the argument of this motion.

For all of these reasons appellees pray that this appeal be dismissed with the costs to the appellants, and pray leave to refer to the accompanying affidavits referred to therein in support of this their motion.

Respectfully submitted.

OTTO & WILLIAM THUM,
By T. J. JOHNSTON, *Counsel.*

In the United States Circuit Court of Appeals for the First Circuit.

O. & W. THUM *vs.* JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. Bullard, and William A. Dole, Trading under the Name and Style of John A. Andrews & Co.	In Equity. No. —.

On appeal from the circuit court of the United States for the district of Massachusetts.

Affidavit.

Thomas J. Johnston, being duly sworn, deposes and says that he is solicitor and of counsel for Otto and William Thum in the above-entitled cause, and that he did conduct the same to final hearing and decree in the circuit court of the United States for the district of Massachusetts; that after the final decree in the above cause, one John W. F. Willson, a witness in the said cause, together with one John McC. Perkins, did call at his office, No. 180 Summer street, in the city of Boston, and that then they did produce a copy of letters patent No. 125,346, to Thaddeus E. Peck, of Bridgeport, Conn., and that thereupon said Perkins remarked that he was not sorry that

the case had gone as it had; that he was aware that the patents in this cause contested were now more valuable by many thousand dollars than they had ever been before, but that the said letters patent to Peck were a complete defense to the action; and they did then and there submit the said letters patent to complainants' counsel, as he verily believes, for the purpose of inducing him to make them an offer to suppress the same; but that complainants' counsel did then advise them of the fact that he was acquainted with the contents of the said letters patents to Peck before the bill in this cause was filed, and that he did not consider such letters patent an answer to the bill; thereupon said Willson and Perkins resumed possession of the copy of said letters patent, and left counsel's office.

But that thereafter about the space of three days from the time of said interview, on or about February 14, 1893, the said John W. F. Willson returned to the office of complainants' counsel and held further conversation with him, and that complainants' counsel then and there asked him what was his object in making him these visits upon that score, and that he, complainants' counsel, did not suppose that complainants would have any dealings upon such a basis as that, but that if he chose to submit an offer, complainants' counsel would forward it to his clients, as he conceived himself in duty bound to do, but advised said Willson that he did not think they would have anything to do with such a proposition. That complainants' counsel did then write a letter to the Messrs. Thum, under date of February 14, 1893, communicating to them the statements and offers made by John W. F. Wilson, a copy of which letter is hereunto annexed, marked "copy of letter to Messrs. Thum." That in reply thereto he received a letter dated February 18, 1893, repudiating the proposition, which letter is hereunto annexed, marked "Exhibit Thum Letter;" but that thereafter, to wit, on February 28, 1893, the said John W. F. Willson again came to see counsel, and after being advised of the contents of the letter of Messrs. Thum, did then make anew his proposition to suppress evidence, and that counsel did reduce the same to writing, and it was signed by John W. F. Willson, who also affixed the signature of Benjamin F. B. Willson thereto, stating that he had authority so to do, the said Benjamin F. B. Willson being, as affiant is informed and very believes, the son of and successor in business to John W. F. Willson. That counsel did then submit this proposition to his clients, Otto and William Thum, of Grand Rapids, Mich., and in reply thereto received a letter declining to have anything to do

with such a proceeding; and that said original proposition in writing of John W. F. Willson and Benjamin F. B. Willson, his son, is hereunto annexed and marked, "Exhibit Willson Proposition;" and the reply of the Messrs. Thum thereto is hereunto annexed and marked "Thum letter replying to Willson proposition." And affiant doth further depose and say that the exhibits attached to this affidavit have been in his exclusive possession except the Exhibit Willson Proposition, which was forwarded by the Messrs. Thum to their patent solicitor and expert, General Ellis Spear, by whom it was returned to complainants' solicitor prior to the filing of this affidavit.

And affiant further deposes and says that the said Willson agreed to return and get the answer from the Messrs. Thum at a future time within one week thereafter, but that he did not so return; and affiant did either by word of mouth or by letter communicate to him the contents of such reply to his proposition, but how or in what manner affiant does not now recollect.

THOMAS J. JOHNSTON.

Subscribed and sworn before me this twentieth day of March, 1894.

MYRON F. WESTOVER,

[NOTARIAL SEAL.] *Notary Public.*

FEB. 14TH, 1893.

Messrs. O. & W. Thum Co., Grand Rapids, Mich.

DEAR SIRS: Mr. Wilson was in to see me just now and after some considerable talk he made a point-blank proposition that he should suppress the evidence in his possession, and take as consideration for it an interest in your patent, by which I suppose he means that you should pay him an income each year for his kindness in keeping silent.

This proposition, which I could have answered as well as you, I agreed to submit to you, my reason for doing so being that I wanted to hear from you about the Andrews suit before telling this man that they could go ahead with the Peck patent as fast as they pleased.

Mr. Wilson will come in in about a week for an answer, which I think I have already for him. In the meantime I shall of course

hear from you and have a definite proposition to make to Andrews & Company or some instructions by which I can be guided.

Yours truly, —— ——.

Copy of a letter to Messrs. Thum. M. F. W., N. P.

O. & W. Thum Co., Grand Rapids, Mich.

FEB. 18, 1893.

T. J. Johnston, Esq., Boston, Mass.

DEAR SIR: In reply to yours of the 14th. We shall as usual not consider Willson's proposition. We are as used to "propositions" as Willson is to Sundays.

If you can, settle with Andrews for $2,500.00, and if they refuse we shall fight for the damages awarded by the court.

If you wish, you may tell Willson that no proposition from him or his friends will be considered by us.

We hope to hear from you next week, and remain—

Yours respectfully, O. & W. THUM CO.

"Exhibit Thum Letter." M. F. W., N. P.

Propositions submitted by John W. F. Willson and Benjamin F. B. Willson, both of South Boston, Mass., to Otto and William Thum of Grand Rapids, Mich. Otto and William Thum to make an assignment of an interest in their letters patent for sealed sticky fly-paper and their patent method for packing the same recently in controversy between them and John A. Andrews & Co., in the circuit court of the United States for the district of Massachusetts, to John W. F. Willson and Benjamin F. B. Willson; in consideration of which the said Willsons agree to keep to themselves any information they may have affecting the validity of such patents, and not to allow the same to be used by any of the Messrs. Thum's opponents through them or either of them; and further that the said Thums are to reimburse the Willsons for their expenses incurred in said suit above referred to.

J. W. F. WILLSON,
B. F. B. WILLSON,
By J. W. F. W.

Boston, Mass., Feb. 28, 1893.

"Exhibit Willson Proposition." M. F. W., N. P.

O. & W. Thum Co.

GRAND RAPIDS, MICH., *Mar.* 7, 1893.

T. J. Johnston, att'y, 620 Atlantic Ave., Boston, Mass.

DEAR SIR: We have the proposition dated February 28th, 1893, and signed by J. W. F. Willson, and B. F. B. Willson.

Our only reply is that they have branded themselves "blackmailers" with their own signatures. Our former strong suspicions are now convictions that every detail of suit on their side was an act of the lowest fraud possible. The two men have degraded themselves to the meanest level.

You may instruct the Willsons that we shall make no settlement that is not dictated by the proper court.

We do not think it necessary to make further comment on their dishonorable proposition.

Please do make it plain to these men that we will only treat with them through the courts.

We are yours respectfully, O. & W. THUM CO.

"Thum letter replying to Willson proposition." M. F. W., N. P.

In the United States Circuit Court of Appeals for the First Circuit.

O. & W. THUM *vs.* JOHN A. ANDREWS, WILLIAM Y. WADLEIGH, B. F. Bullard, and William A. Dole, Trading under the Name and Style of John A. Andrews & Co.	In Equity. No. —.

On appeal from the circuit court of the United States for the district of Massachusetts.

Affidavit.

Otto and William Thum, being duly sworn, depose and say that they are the complainants in the foregoing cause named; that on or about the seventh day of March, 1893, they received from Thomas J. Johnston, their solicitor in this cause, a letter enclosing a proposition from one John W. F. Willson, of South Boston, Mass., and Benjamin F. B. Willson, which proposition was to the effect that the said Willsons agreed to suppress any and all evidence which they might have in their possession affecting the validity of the

letters patent made the basis of this suit; and that the complainants herein did consult and they did write and send to their counsel a letter a copy of which is hereunto annexed and marked, "Copy of Thum letter replying to Willson proposition."

And affiants further state that the complainants in this suit have acted in good faith throughout, and have procured and have wished to procure a decision upon the merits from the honorable the circuit court of the United States for the district of Massachusetts, which said decision is embodied in the decree of his honor Judge Carpenter in this cause filed, which affiants respectfully submit should not be disturbed.

WILLIAM THUM.
OTTO THUM.

Subscribed and sworn before me this fifteenth day of March, 1894.

F. DUNNEBACKE,
Notary Public, Kent County, Michigan.

Record on Motion to Dismiss Appeal.

United States Circuit Court of Appeals for the First Circuit, October Term, 1893.

JOHN A. ANDREWS *et al.*, Defendants, Appellants,
v.
OTTO THUM *et al.*, Complainants, Appellees. } No. 89.

Extracts from the transcript of record.

The following extracts from the transcript of record are printed by direction of the appellees for use at the hearing by the court of their motion to dismiss the appeal.

JOHN G. STETSON, *Clerk.*

Deposition of John W. F. Willson.

Direct examination by JOHN McC. PERKINS, Esq., of counsel for defendants:

BOSTON, *March* 9, 1892.

(Complainants' counsel makes the same objection to the deposition of this witness as to the deposition of William P. Clough.)

Int. 1. What is your name, age and residence?

(Same objection.)

Ans. John W. F. Willson; age, sixty-four; residence, 57 G street, South Boston.

Int. 2. Did you ever manufacture fly-paper?

Ans. Yes.

Int. 3. Please explain what kind of fly-paper you manufactured, when and where you manufactured it, and tell all you know about the use, manufacture and sale of such fly-paper.

(Objected to as immaterial and indefinite.)

Ans. I have made two kinds of fly-paper, one called the sticky fly-paper, and the other the poison fly-paper. I have manufactured both of these kinds *of* forty-five years. I first manufactured these fly-papers in East Cambridge; the sale for both kinds was very limited in amount, for ten or twelve years or more; at that time they became staple articles in the market. The sale of fly-papers has increased year by year till now it is an important article of merchandise.

Int. 4. Now describe in detail the sticky fly-paper which you have spoken of, state when and where you first made it, sold it, or used it; also state all you know about its public use, manufacture and sale.

(Objected to as leading.)

Ans. Sticky fly-paper, as I recollect it, at first was a composition of resin and castor oil. The resin is dissolved in the castor oil by heat; the mixture was then spread on paper by hand brushes. The paper at that time was the common brown paper, or a manila paper, so called; the paper was first covered with a sizing made of glue; this sizing rendered the paper impervious to this mixture of oil and

resin. The first I made was in East Cambridge, while learning the drug business. The first I recollect being sold was to the hospital connected with the jail and house of correction, situated in East Cambridge. This sale was by the recommendation of Dr. Anson Hooker, resident surgeon at that place. The sales of fly-paper were first done by boys, who peddled it about the streets, houses and stores. The starting point of this fly-paper business dates back to 1846 or 1847, as near as I can make it. As near as my memory serves, I first made it in East Cambridge, in 1846 or 1847,—I go by memory only. It was the sticky material as described, spread with a brush on common brown paper, or manila paper, first prepared with a glue sizing to prevent the oil striking through the paper.

(Objected to as immaterial, and not disclosing any anticipation of the letters patent in suit.)

Int. 5. Is that all the sticky fly-paper you ever made, and, if not, fully describe what other kinds of sticky fly-paper you have ever made, used or sold, and state fully all you remember about such manufacture, use or sale.

(Objected to as leading, witness's last answer being presumed to state the facts within his knowledge.)

Ans. After a demand for sticky fly-paper had been made, I used my efforts in improving the quality and the looks of this merchandise. The first improvement was the quality of the paper; I had white paper made purposely. This was in large, flat sheets of heavy, white paper, first printed with a picture or large label in red ink, with the name "Mean Plum," Chinese fly-paper free from poison; this was spread over the whole surface of one sheet with the exception of one inch entirely around the sheet; then another unspread sheet of paper was placed on top of this, making two sheets of paper, as the underneath sheet produced the same effect on the top sheet when pressed together. After awhile I found it more convenient to spread one-half of a sheet of paper and then double it together, so as to produce the same effect; this method I pursued, I think, for about twenty years, and I have continued the manufacture of sticky fly-papers in this manner uninterruptedly for over forty years.

(Answer objected to on the same grounds.)

Int. 6. Did you ever manufacture any sticky fly-paper except what you have already described, and in the manner which you have already described, and, if so, state when, where, and all you know about its manufacture, public use and sale.

(Objected to as leading.)

Ans. I was always experimenting to make improvements. Among the many improvements was the placing on of a wax border or bar, to prevent the sticky material from oozing out between the sheets; this device was put into practical use by myself in 1878, although I had experimented with the same device long before; for the last forty years all my manufacturing has been done on Broadway, South Boston. The sales have been made all over New England, by peddlers and wholesale dealers.

Int. 7. At what date, or about what date, was this sticky fly-paper, with a wax border, sold to the public or in public use, and for what period did it continue to be on public sale?

(Objected to as leading.)

Ans. First sold to the public in 1878 and continued to be sold for about three years.

Int. 8. Please examine the exhibit marked "Clough A," and state in what respects, if any respects, the sticky fly-paper with wax border, which you sold in 1878, differed from that.

(Objected to as leading, and incompetent, witness not having been qualified to give expert testimony.)

Ans. The exhibit marked "Clough A" now presented to me, differs in no respect from that manufactured by me in 1878; it is from the same lot of paper I used at that time, printed upon the same type, and is in every respect the same, although torn and disfigured.

(Answer objected to as incompetent.)

Int. 9. For what purpose did you place the wax border on the sticky fly-paper made by you in 1878, and how did it happen that you commenced to use a wax border while you formerly made it without a wax border?

(Objected to as leading.)

Ans. I placed the wax border around the edges of the paper, so as to seal the edges and prevent the sticky material, which was of a

much thinner consistence, and more liable to run in warm weather, from running out. This idea occurred to me that the wax border would answer this purpose. I had experience in the spreading of plasters, in my drug business, and the suggestion naturally came to me that the confining border was used around many plasters, more especially on blister plasters. This has been a well-known method many years.

(Adjourned.)

MARCH 9, 1892.

Cross-examination by THOMAS J. JOHNSTON, Esq., of counsel for complainants:

Cross-int. 10. Please state your interest in this suit.

Ans. It is a business I have followed for many years, and in 1885, on account of my health, I wished to give up all business cares. My drug store I gave to my oldest son, John W. F. Willson, Jr. My manufacturing in specialties I gave to my second son, Benjamin F. B. Willson; hence my interest in this suit.

Cross-int. 11. What relations exist between you and the respondents?

Ans. None whatever.

Cross-int. 12. How is it, then, that this sale is undertaken by the respondents, and that they advertise themselves to be your wholesale agents?

Ans. I do not know this to be the fact.

Cross-int. 13. Do you not know that the respondents, Messrs. John A. Andrews & Co., sell the so-called "Mammoth sticky fly-paper," made at your factory?

Ans. I have no factory.

(Answer objected to as irresponsive, and question repeated.)

The WITNESS: I know that John A. Andrews & Co. sell the "Mammoth sticky fly-paper," made by Benjamin F. B. Willson, my son. I have no pecuniary interest in any business, and have not had for six years.

Cross-int. 14. And that sticky fly-paper is made, is it not, at the factory formerly owned by you, which you afterwards gave to your son; is that the case?

Ans. It is the case.

Cross-int. 15. Is it not a fact that an agreement was entered into between the respondents and you or your son, or some one repre-

senting the factory interest, by which the respondents were to be protected, or saved harmless from any suit brought or judgment obtained against them, for infringement of the letters patent owned by Messrs. O & W. Thum?

Ans. Yes.

Cross-int. 16. State the terms of that agreement and by whom it was made.

Ans. I have not the slightest idea who drew it up, but recollect there was an agreement, whereby my son guaranteed to protect his rights, and defend any suit brought against John A. Andrews & Co., and I recollect endorsing some such agreement.

Cross-int. 17. What do you mean by the word endorsing? Do you mean that you made yourself jointly liable with your son in case such a suit was brought, or such a judgment obtained, against Messrs. Andrews & Co.?

Ans. I meant just this, that you have asked.

Cross-int. 18. In view of this statement do you wish to modify your answer to cross-int. 11? (Cross-int. 11 read to witness.)

Ans. I do not wish to modify any of my statements, as it would not affect me personally whichever way the suit goes.

Cross-int. 19. You are aware, are you not, that if this suit goes against Messrs. Andrews & Co. you are liable over to them, for any judgment or decree that may be obtained, and that they may proceed to collect the judgment from you without regard to your son, if they so elect?

Ans. Yes, if they can find anything to collect.

Cross-int. 20. What led to the making of this agreement?

Ans. I cannot tell; it is my son's business.

Cross-int. 21. Did not your son explain to you what the papers were, when you endorsed this agreement?

Ans. Yes.

Cross-int. 22. Did not that explanation include why he made the agreement?

Ans. I think it did.

Cross-int. 23. Don't you know it did?

Ans. No.

Cross-int. 24. What is your recollection of the reasons he gave for making this agreement?

Ans. I think, but am not positive, that this agreement spoken of was drawn up by John A. Andrews & Co., or their attorney, and handed to my son, requesting him to sign it.

Cross-int. 25. Why did they request him to sign it?

Ans. I cannot tell; it was his business.

Cross-int. 26. Do you mean that you do not know, or that you decline to tell because it concerns your son's business?

Ans. I don't decline to tell because it is my son's business. I simply give my recollections. My impression is that this paper spoken of was made out after the suit was brought against John A. Andrews & Co.

Cross-int. 27. Do you remember the date of the agreement?

Ans. I do not.

Cross-int. 28. How much was the cost of the machine which you say you had made at the Suffolk Glass Works in 1878?

Ans. I never said I had one made there. I had one put together and adjusted at that place.

Cross-int. 29. What was the cost of that work?

Ans. I think it was thirty-five dollars for the work and materials that they furnished.

Cross-int. 30. What was the total cost of the machine?

Ans. About eighty dollars.

Cross-int. 31. Could that machine do the work as fast as a man could do it in the old way by hand?

Ans. Faster, if it kept in shape; but as it was a demonstration in wood it soon became useless.

Cross-int. 32. About how many men was the machine equal to when in running order?

Ans. Ten or fifteen, as near as I can estimate.

Cross-int. 33. What caused it to get out of order?

Ans. The rolls being made of wood could not withstand the heat of this sticky compound, but became distorted.

Cross-int. 34. And was that its only fault, if not, state what others there were.

Ans. Otherwise it was perfect.

Cross-int. 35. Were the other parts of this machine of wood?

Ans. Wood and iron.

Cross-int. 36. Describe this machine, in detail, both as to its construction and operation.

Ans. The machine consisted of three wooden rolls and one spool or bobbin for placing on the border around the sticky plaster. These three rolls and bobbin were set in a framework that held them in a relative position; the three rolls and bobbin were geared together by five cog wheels. This arrangement was turned by hand

and crank; by turning the crank, the three rolls and bobbin revolved in unison. This machine differs entirely from the one represented and described in a patent of Otto Thum, 305,118, as that patent paper shows no device whatever for placing on the wax border around the sticky plaster; this is the only important part of a machine for spreading sticky fly-paper with a wax border. The description in Thum's patent is wholly inadequate to accomplish this result, and no mechanic can produce a machine by this description in Thum's paper that will produce sticky fly-paper with a wax border. Herein my machine differs from Otto Thum's. Spreading plasters with rolls is a method of spreading plasters used before Mr. Thum or myself were born.

(Counsel for complainants moves to strike out so much of this answer as expresses an opinion upon the operativeness of the machine described by the letters patent in suit as incompetent and immaterial, witness not having been qualified to give expert testimony, and further calls attention to the fact that during his answer witness has consulted written memoranda not offered in evidence nor properly qualified, and in default of the production thereof, for examination, moves to suppress the entire deposition of the witness accordingly, and further cross-examines *de bene esse*.)

Cross-int. 37. Describe the course of the paper in passing through this machine.

Ans. There were two rolls of paper, one at each end of the machine; the paper from one side passed between two rollers; the underneath roller took up the sticky material from the pan underneath and applied it to the paper as it passed between. The roll of paper at the other end of the machine passed between the spool or bobbin and a roll above it. The bobbin revolved in a pan of the wax, and, as it revolved, came in contact with the paper, and the rims placed the wax on the borders at intervals, which formed the border around the sticky plaster. This sheet passed on and came in contact with the paper on the opposite side of the machine; this brought the sticky plaster within the confining border.

Cross-int. 38. How did you apply the wax to the ends of the sheets?

Ans. By two bars running parallel from one rim of the spool to the other.

Cross-int. 39. Then if I understand your description, this wax frame or border was applied all around the edge of one sheet, which

sheet was then applied to the sticky surface of another. Is that correct?

Ans. Yes.

Cross-int. 40. Please draw on the record a sketch showing the relative positions of these rolls; take a nickel and draw your pencil around the edge of it, so as to show the roll, as if it were cut in two in the middle.

(MEMORANDUM.—A sketch in pencil, marked "Willson's sketch," is here drawn upon the original deposition.—JOHN G. STETSON, *Clerk.*)

Ans. I have done so and mark it "Willson's sketch."

Cross-int. 41. Please describe the sketch you have drawn.

Ans. "A" is the spool or bobbin, that revolves in the wax; "C" is the roll that revolves in the sticky compound; "B" is simply a roll to hold the paper down against the rims of the bobbin, that places on the wax; "D" is the roll that presses the paper against the roller "C," at the same time it carries off the two sheets of paper as they come in contact; "E" is the pan that holds the wax for the border; E' is the pan which holds the sticky composition. The arrows give the direction the paper G and G' travels; "F" represents two bars running parallel; the faces of both are on a plane with the rims of the bobbin.

Cross-int. 42. Those rolls are drawn with continuous cylindrical surfaces; that is correct, is it?

Ans. With the exception of rubber bands at the end of each roll.

Cross-int. 43. And the roll C then applied the sticky substance by taking it up from the pan and putting it on one surface of the paper continuously, as I understand your description and sketch, did it?

Ans. It did for a while; but at the suggestion of Mr. Clough a slot was cut out the entire length of the roll that put on the sticky part.

Cross-int. 44. How wide was this slot?

Ans. I think about one inch and a half.

Cross-int. 45. How large were the rolls?

Ans. About five inches in diameter and eight inches long.

Cross-int. 46. Why did you discontinue the use of this machine instead of having iron rolls made?

Ans. About that time a parchment paper came into the market, that answered a much better purpose than any other kind of paper, inasmuch as it required no sizing, and was impervious to oil, much cleaner and handsomer in appearance, and more satisfactory to customers; this paper could only be obtained in sheets, could not be had in rolls, and never has been produced in rolls, till within the last six months; it could not be used on the machine to advantage for that reason.

Cross-int. 47. Why did you not continue the manufacture of sticky fly-paper with a wax border?

Ans. I preferred to use this parchment paper, as my customers demanded it and efforts were being made to produce this parchment paper in rolls, and I did not care to use any other paper, expecting year by year to get it in rolls.

Cross-int. 48. You then made sticky fly-paper, but without a wax border, from this parchment paper, did you?

Ans. I did.

Cross-int. 49. Were your customers satisfied with this?

Ans. Not thoroughly.

Cross-int. 50. To whom did you sell your product in 1878 and 1879? I refer to wholesale trade.

Ans. Mr. Clough sold the most of it. I know he sold to Smith & Doolittle, wholesale druggists under the Museum, who ordered quite largely. We had also several agents that preferred to take that paper. We soon found we could not supply the demand, as the machine was continually getting out of order, and a great part of the paper, with a border around the sticky part, was produced by hand; that is to say, the wax border was placed around the sticky plaster with a wooden hand stamp. We could not supply the demand fast enough at that time and abandoned it for the time being, that is, abandoned putting on the border.

Cross-int. 51. To whom did you pay the bill for work done at Suffolk glass works?

Ans. I think it was Clarence Jenkins who was clerk at that time at their office on Milk street, brother of Charles H. Jenkins.

Cross-int. 52. You are the same J. W. F. Willson, who, upon Nov. 11, 1891, signed an affidavit before John M. Perkins for use in this cause, are you not?

Ans. I signed an affidavit; I don't know the date.

(Copy of affidavit shown witness.)

Cross-int. 53. That is the affidavit, is it not?

Ans. I think it is, it looks like it.

(Copy offered in evidence by complainants' counsel and marked by the examiner, with his name and the date, as "Complainants' Exhibit Willson Affidavit," and retained by counsel for the hearing.)

Cross-int. 54. Did you ever instruct John M. Perkins, respondents' counsel in this cause, to write to Messrs. O. & W. Thum, or did you know that he would so write, or had so written?

Ans. Never instructed him, but told him, as my son's counsel, to do as he thought best.

Cross-int. 55. Your son's counsel in what litigation?

Ans. This one we are interested in now.

Cross-int. 56. Then how do you account for the fact that Mr. Perkins's letter to Messrs. O. & W. Thum bears date Aug. 29, 1890, while the bill in the case was filed July 28, 1891, and respondents' infringement did not begin till the season of 1891?

Ans. Mr. Thum's previous threats.

Cross-int. 57. Were these threats in writing?

Ans. No.

Cross-int. 58. How were they made?

Ans. Indirectly.

Cross-int. 59. What is meant by the expression in Mr. Perkins's letter, It will certainly be to your advantage to see these parties "as to this matter"?

Ans. I did not write Mr. Perkins's letter. I did not direct Mr. Perkins what to write.

Cross-int. 60. When did you first see a copy of the letters patent of Messrs. O. & W. Thum?

Ans. I think I sent to Washington for them about two years ago.

Cross-int. 61. Did you send to the Patent Office?

Ans. I think the letter was directed to the honorable Commissioner of Patents, Washington, D. C.

Cross-int. 62. Did you show these patents to Mr. Perkins?

Ans. I did.

Cross-int. 63. Why?

Ans. After hearing these threats and the claim that Mr. Thum made, I thought it was time to see what rights I had in the matter. I went to Mr. Perkins for advice, showed him these patent papers, and asked him if that prevented me from pursuing methods that I had used years before.

Cross-int. 64. What advice did he give you?

Ans. Mr. Perkins told me that the claim was invalid on the face of it, after reading the paper.

Cross-int. 65. Did he explain why?

Ans. I don't recollect any particular explanation.

Cross-int. 66. So you were acquainted with these patents when you decided to resume the methods of making fly-paper with wax border, such as you say you practised years ago?

Ans. Never relinquished it; practised it more or less ever since I first commenced it.

(Answer objected to as irresponsive.)

Cross-int. 67. (Cross-int. 66 repeated.)

Ans. I don't want to convey the impression of ever abandoning it. I was so acquainted.

Cross-int. 68. Why was it, Mr. Willson, that you could not furnish this paper last season, in the beginning of the season, to Messrs. Andrews & Co., though able to do so in the latter part of the season?

Ans. I had not the facilities for sizing the paper with glue, and it made a delay, as the size of the patent was a third, or nearly twice, as large as my regular paper.

Cross-int. 69. Do you still have the apparatus which you formerly used to make this paper?

Ans. I have the rolls and the spool, in pieces or halves,—they are apart,—to get the rim for another use.

Cross-int. 70. Did you ever make a change in the composition of your wax border?

Ans. Yes; more particularly in the proportions.

Cross-int. 71. Why did you make that change?

Ans. To adapt it to the temperature.

Cross-int. 72. Then the first composition was not satisfactory in that regard?

Ans. No; it require- experimenting with.

Cross-int. 73. Do you remember the exact time when this machine, which you have described, was put together?

Ans. I think in the spring or summer of 1878.

Cross-int. 74. Do you know the month?

Ans. I do not.

J. W. F. WILLSON.

Attest: LOUIS GIRARDIN,
Notary Public, Special Examiner.

Complainants' Exhibit Willson Affidavit.

(Put in evidence, page 11.)

Affidavit of J. W. F. Willson.

(Filed Nov. 13, 1891.)

Know all men, that I, J. W. F. Willson, of Boston, county of Suffolk, Commonwealth of Massachusetts, on oath depose and say: That to the best of my belief the following statements and claims are true:

1st. I claim I am the original inventor and first producer of the so-called sticky fly-paper, and have continued the manufacture and sale of the same since the year 1845.

2d. I claim to have used the inventions now patented by Otto Thum years before any such claims were set up, and stand ready to produce ample testimony by scores of employees and other competent witnesses, to these facts.

3d. I claim I can produce the rollers, forms, presses and moulds for both the spreading of the sticky plaster and the fixing on of the wax border, also the mechanics who made the same.

4th. I claim that the method of applying one single sheet of paper to one other single sheet of paper, with the material spread on one surface, only (claimed by Otto Thum as his invention), has been my custom for utilizing torn double sheets for the last forty years, and was the original method used by me.

5th. I claim the border of wax is not original with Thum or myself, but has been the common practice for many years among apothecaries, and full instruction for use and application of such border can be found in the old, as well as the modern dispensatories, under the head of plasters and blisters, directing that a border of sticking plaster, the same being a compound of resin, wax and tallow (the same used by Thum), to be placed around, as a margin or border; this margin is less sticky than the plaster, but becomes adhesive by heating (same will apply to Thum patent border), and the probability is Thum obtained the suggestion from this source, as I did. Thum uses the same compound of wax, resin and tallow as a margin or border, for the same purpose, directed in the dispensatories, viz: to keep the sheets in position, and to prevent running or oozing.

Among the many methods for confining the sticky compound in the manufacture of sticky fly-paper used by me are the following:

At one time I glued the edges of the paper (after being spread with the sticky compound) all around to the width of one-half inch. I had a black line printed around each sheet inside the glued margin, indicating where the sheet was to be cut by scissors, or other means; this would allow the sheets to be separated readily.

Another method used was this: I took twenty or more sheets and confined them with a thin metal binding in a similar manner to cheap maps, show-cards, or pictures, clamping them down so as to prevent oozing.

Before this, I had a press made, with forms. I took a dozen or more sheets at a time, and stuck them up by the press in dish form, for the before-mentioned purpose.

All these methods before either of Otto Thum's patents were allowed.

J. W. F. WILLSON.

SUFFOLK, *ss*:

BOSTON, MASS., *Nov.* 11, 1891.

Before me personally appeared J. W. F. Willson, and made oath that the above statement by him subscribed is true.

[SEAL.] JOHN M. PERKINS,
Notary Public.

Motion to Reopen.

(Filed May 6, 1893.)

The defendants move the court that this case be reopened for the purpose of introducing for the consideration of the court the patent No. 125,326, granted to Thaddeus E. Peck on April 2, 1872, for an improvement in fly-paper. A certified copy of this Peck patent, under the seal of the United States Patent Office, is herewith filed with this motion. This Peck patent is a duplicate of the Thum patent on which this suit is brought. The Peck patent expired by legal limitation and became public property on April 2, 1889. The Thum patent was granted on May 22, 1883. This is an absolutely clear case, and there is no possible chance to doubt but that both the Peck patent and the Thum patent are precisely alike in all respects.

The slightest inspection of these two patents places the absolute identity of them beyond a shadow of doubt.

JOHN M. PERKINS,
For Defendants.

Final Decree.

May 13, 1893.

Inasmuch as it appears that the parties have settled the money payments ordered by the interlocutory decree, it is hereby ordered, adjudged and decreed that reference to a master be waived and that the defendants be ordered to pay to the complainants the sum of $2,500 as damages and profits to be recovered by the complainants of the defendants herein and as costs of suit.

By the court:

BENJ. H. BRADLEE,
Deputy Clerk.

The foregoing decree is assented to.

THOMAS J. JOHNSTON,
Complainants' Solicitor.
FISH, RICHARDSON & STORROW,
Defendants' Attorneys.

On the fifteenth day of May, A. D. 1893, the complainants acknowledge satisfaction and discharge of the money payments ordered by the final decree in said cause.

On the twenty-third day of June, A. D. 1893, this cause comes on to be heard on the motions to reopen and to dissolve injunction filed on the sixth day of May, 1893, at the October term of this court, A. D. 1893, and is fully heard before the Hon. George M. Carpenter, district judge of the United States for the district of Rhode Island, duly assigned to hold said circuit court, whereupon the court orders that the said motions be, and the same are, hereby denied.

At the October term of this court, A. D. 1893, the following prayer for appeal and assignment of errors was filed:

Prayer for Appeal and Assignment of Errors.

(Filed Nov. 17, 1893.)

Pursuant to rule 11, formulated and adopted by the United States circuit court of appeals for the first circuit, the above-named defendants and appellants respectfully make the following assignment of errors in the decisions filed on June 23, 1893, in the above-entitled cause, to wit:

The court refused to reopen this case and to dissolve the permanent injunction granted in this suit. The court erred in these decisions because the subject-matter of the Thum patents, on which this suit and permanent injunction was based, was completely and fully answered by the Peck patent of April 2, 1872, a copy of which was filed with the motions which were denied by the court on June 23, 1893, as aforesaid.

The record in this case also shows that the subject-matter of the Thum patents was completely and fully described in books printed as long ago as 1849, and even books printed years before that date. The testimony on record in this case also completely shows that the subject-matter of the Thum patents was publicly used many years before the Thum patents were granted.

As this permanent injunction now stands, it prohibits the defendants from doing those things which the laws of the United States plainly grant them a right to do. If a judge of the United States can assume powers not lawfully conferred on him, then this is no longer a free Government, but a despotism. And if his unlawful assumption of power is allowed to continue, under color of law, this action then becomes the action of the court, which refuses to dissolve such a wrongful injunction, and justice and right are failures under our theoretically free institutions. And the defendants pray that an appeal may be allowed to the circuit court of appeals of the first circuit.

JOHN M. PERKINS,
Attorney for John A. Andrews & Co. et al., Defendants.

The above prayer for appeal and assignment of errors are made by the undersigned in the name of John A. Andrews *et al.*, defendants, in whose name the undersigned have heretofore defended this suit under due authority from them.

JOHN B. F. WILLSON.
BENJAMIN F. B. WILLSON.

This is allowed to be added to the prayer for appeal.

G. M. CARPENTER, *J.*

On the fifth day of February, A. D. 1894, the following rescript was filed:

Rescript.

(Filed Feb. 5, 1894.)

On the prayer for appeal of John W. F. Willson and Benjamin F. B. Willson, let an order be made that the appeal is allowed.

G. M. CARPENTER, *J.*

And thereupon, to wit, Feb. 5, bond on appeal being approved and citation to the complainants being signed, it is ordered that the appeal in this cause be allowed.

By the court:

ALEX. H. TROWBRIDGE, *Clerk.*

On the sixth day of February, A. D. 1894, the following protest was filed:

Protest.

(Filed Feb. 6, 1894.)

The above-named defendants, John A. Andrews, William G. Wadleigh, B. F. Bullard, and William A. Dole, respectfully protest against the allowance of an appeal in the above-entitled cause, and represent that said cause is settled and that they do not desire, nor consent to, nor authorize an appeal.

By their solicitors, FISH, RICHARDSON & STORROW.

Bond to Party on Appeal.

(Filed Feb. 5, 1894.)

Know all men by these presents that we, John W. F. Willson and Benjamin F. B. Willson, of South Boston, Mass., as principals, and Joseph B. Sharland, of Boston, Mass., as surety, are held and firmly bound unto Otto and William Thum, of Grand Rapids, Mich., in the full and just sum of two hundred dollars, to be paid to the said Otto and William Thum, their certain attorney, executors, adminis-

trators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas, lately at a circuit court of the United States for the district of Massachusetts, in a suit in equity depending in said court, between Otto and William Thum, complainants, against John A. Andrews *et al.*, as defendants, a decree was entered against the said John A. Andrews *et al.*, defendants; and the said John A. Andrews *et al.*, having obtained an appeal to remove said cause to the United States circuit court of appeals for the first circuit, to reverse the decree in the aforesaid suit, and a citation directed to the said Otto and William Thum citing and admonishing them to be and appear in the said United States circuit court of appeals for the first circuit, in the city of Boston, Massachusetts, on the first day of March, A. D. 1894:

Now, the condition of the above obligation is such, that, if the said John A. Andrews *et al.* shall prosecute this appeal to effect, and answer all damages and costs if they fail to make this appeal good, then the above obligation to be void; else to remain in full force and virtue.

JOHN W. F. WILLSON. [SEAL.]
BENJAMIN F. B. WILLSON. [SEAL.]
JOSEPH B. SHARLAND. [SEAL.]

Sealed and delivered in presence of—
SMITH W. PERRY.
BENJ. H. BRADLEE TO J. B. S.

Approved:
G. M. CARPENTER, *J.*

A true copy:
Attest: ALEX. H. TROWBRIDGE, *Clerk.*

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Otto and William Thum, of the city of Grand Rapids, in the county of Kent, and State of Michigan, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the first circuit, in the city of Boston, Massachusetts, on the first day of March next, pursuant to an appeal duly obtained from a decree of the circuit court of the United States for the district of Massachusetts, wherein John A. Andrews, William Y. Wadleigh, B. F. Bullard and William A. Dole, of Boston, in the State of Massachusetts are defendants, and wherein John W. F. Wilson and Benjamin F. B. Wilson, of said Boston, appear as principals on the bond on appeal, in which bond said John A. Andrews *et al.* appear as appellants and you are appellees, to show cause, if any there be, why the said decree, entered against the said appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George M. Carpenter, judge of the district court of the United States for the district of Rhode Island, duly assigned to hold said circuit court this fifth day of February, in the year of our Lord one thousand eight hundred and ninety-four.

G. M. CARPENTER, *Judge.*

UNITED STATES OF AMERICA, }
Western District of Michigan, } *ss:*

FEB. 21, 1894.

I hereby certify that on the twenty-first day of February, 1894, I served the within citation by showing this original writ and delivering a true copy thereof to Otto and William Thum.

CHARLES R. PRATT,
United States Marshal,
By C. E. BREWSTER, *Deputy.*

Answer.

(Filed Sept. 14, 1891.)

These defendants, now and at all times hereafter saving and reserving unto themselves all and all manner of benefit and advan-

tage of exception that can or may be taken to the many errors, uncertainties, and insufficiencies in the said bill of complaint contained, for answer thereto, or unto so much thereof as they are advised it is material or necessary for them to make answer unto, answering, say :

1. These defendants deny that the said Otto Thum, one of the complainants in this bill, was or is the true, original and first inventor of a certain new and useful improvement in sticky fly-paper and machinery for the manufacture of the same, such as is described in said bill of complaint and in the two patents there named and referred to.

2. And these defendants, further answering, do not admit that letters patent of the United States, numbered 305,118, and dated Sept. 16, 1884, was granted to one Otto Thum, for an alleged new and useful improvement in sticky fly-paper ; and whether or not said letters patent were duly applied for or lawfully granted as stated in said bill, these defendants do not know and are not informed, save by said bill, of the truth of said statements ; and they, therefore, deny the same, and leave the complainants to make such proof thereof as they may be advised.

3. And these defendants, further answering, deny that the said Otto Thum, one of the complainants of this bill, was, on or about the twenty-seventh day of February, 1883, the true, original and first inventor of a second new and useful improvement in sticky fly-paper ; and that said alleged second invention as well as said alleged first invention, before referred to in said bill of complaint, were well known and used in public, and in public use more than two years prior to either of the two applications for a patent named in said bill of complaint.

4. And these defendants, further answering, do not know, and therefore deny that said Otto Thum made due application, and in all and every respect complied with the statutes in such case made and provided, and did obtain *in* letters patent of the United States on May 22, 1883, and numbered 278,294, as set forth in said bill of complaint, and leave the complainants to make such proof as they may be advised.

5. And these defendants, further answering, say that they do not know and are not informed, save by the bill, whether the assignment mentioned therein was made or recorded as alleged, and, therefore, they deny the same, and leave the complainants to make such proof as they may be advised.

6. And these defendants, further answering, say, on information and belief, that long before the alleged invention of said Otto Thum of the alleged improvement in sticky fly-paper as set forth in this bill of complaint, that the same was known to be in public use by Merrill S. Noyes, now residing in Boston, Mass., about the years 1878 and 1879, and in subsequent years, in Hartford, Conn., in Norwich, Conn., and in various other places in Connecticut and in Massachusetts.

7. These defendants, further answering, say, on information and belief, that William P. Clough, now residing in Everett, in the State of Massachusetts, was engaged in the years 1878 and 1879 in business with John W. F. Willson, of Boston, Mass., in the manufacture and sale of sticky fly-paper, substantially like that described in the two alleged patents claimed to have been granted to Otto Thum in this bill of complaint, and that said William P. Clough made the stamp for putting the border or beaded edge the same as described in Thum's patent, and that said Clough and Willson made, sold and used said sticky fly-paper for three years subsequent to 1878.

8. And these defendants, further answering, say, on information and belief, that John W. F. Willson is the first, original and true inventor of the so-called sticky fly-paper as described in this bill of complaint, and that said J. W. F. Willson first commenced the manufacture and sale of said sticky fly-paper as long ago as the year 1845, and has continued to manufacture the same up to the present time.

9. And these defendants, further answering, say that this alleged invention of sticky fly-paper was not patentable under the laws of the United States, and that no valid patent could be granted therefor, and that substantially the same process and mode of manufacture of said sticky fly-paper by said Thum has been carried on and practiced for a great many years in the manufacture of adhesive plasters, and is described on page 520 of Mohr and Redwood's Practical Pharmacy, edited by William Proctor, Jr., and published by Blanchard & Lea, at Philadelphia, in the year 1849, and is also described in many other medical books in the preparation of adhesive plasters, as is well known to all the medical profession.

10. And these defendants, further answering, say, on information and belief, that they have not made, used or sold any sticky fly-paper described and claimed in any valid patent granted by the United States to Otto Thum or to any other person, but have only

sold the sticky fly-paper such as has been made and used by John W. F. Willson, of Boston, during the past forty years and over.

11. And these defendants pray the same benefit of the facts and things herein set forth as if for reason therefor they had demurred to the said bill when a demurrer would have been proper, and the same benefit thereof as if they had specially pleaded to said bill when a special plea would have been proper.

12. Therefore these defendants deny the equity of said complainants' bill, and that the complainants are entitled to the relief in said bill prayed, or any part thereof; without this, that any other matter, cause or thing in said bill contained, material or necessary for the defendants to make answer unto, and not hereinbefore sufficiently answered, confessed, traversed, denied or avoided, is true, to the knowledge or belief of these defendants.

Wherefore these defendants pray that they may be hence dismissed with their costs and charges in their behalf most wrongfully sustained.

JOHN A. ANDREWS.
WILLIAM Y. WADLEIGH.
B. F. BULLARD.
WILLIAM A. DOLE.

STATE OF MASSACHUSETTS, }
County of Suffolk, } ss:

On the fourteenth day of September, A. D. 1891, before me personally appeared William Y. Wadleigh, and made oath that he has read the foregoing answer, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein admitted or stated to be based on information and belief, and as to those matters he believes it to be true.

[SEAL.] FRANK G. NESBITT,
Notary Public.

Order Enlarging Time for Docketing Case.

Filed March 8, 1894.

United States Circuit Court of Appeals for the First Circuit.

JOHN A. ANDREWS *et al.*, Defendants, Appellants,
v.
OTTO THUM *et al.*, Complainants, Appellees.

Order of Court.

March 5, 1894.

COLT, *J.:*

It is ordered by the court that the time for docketing the cause and filing the transcript of record herein be enlarged to the ninth day of March, A. D. 1894.

LE BARON B. COLT,
Circuit Judge.

Copy of Docket of United States Circuit Court of Appeals.

JOHN A. ANDREWS *et al.*
v.
OTTO THUM *et al.*, Appellants. } 89.

Massachusetts C. C. Carpenter, J.

John M. Perkins.
Thomas J. Johnston, specially.

March 8, 1894. Order enlarging time for docketing case filed.
" 9, " Record filed and case docketed.
" 20, " Motion to dismiss appeal filed.
" " " Affidavits of T. J. Johnston and O. and W. Thum filed.
" 23, " Notice of hearing on motion and acceptance of service by F. R. & S. for Andrews *et al.* filed.
" " " Affidavit of Johnston of service on J. M. Perkins filed.
" 30, " Brief of appellees on motion filed.

April 3, 1894. Putnam and Nelson, JJ. Ordered that this case be put on trial list on motion to dismiss appeal, at end of list. Briefs, etc., to be filed by April 11, 1894.

" 11, " Assigned for Wednesday the 18th instant for hearing on motion.

" 13, " Brief of appellants on motion filed.

Decree for Injunction and Account.

Entered Feb. 7, 1893.

This cause came on to be heard at this present October term, 1892, upon the pleadings and proofs, and was argued by counsel for the respective parties; and now, upon consideration thereof, to wit, Feb. 7, 1893, it is ordered, adjudged and decreed as follows, viz., that the letters patent referred to in the complainants' bill, being letters patent of the United States, granted unto Otto Thum upon May 22, 1883, and September 16, 1884, and numbered, respectively, 278,294 and 305,118, for improvements in sticky fly-paper and the manufacture thereof, are good and valid patents, and that the said Otto Thum was the original and first inventor of the improvements described and claimed therein; and that the said defendants have infringed the said patent, and upon the exclusive rights of the complainants under the same.

And it is further ordered, adjudged and decreed, that the complainants recover of the defendants the profits which they have received or made, or which have accrued to them from said infringement by the manufacture, use or sale of the improvement described and secured by said letters patent, at any and all times since the issue of the said letters patent, and in addition thereto the damage which the complainants have sustained thereby.

And it is further ordered, adjudged and decreed, that it be referred to Walter B. Grant, Esq., a master *pro hac vice* of this court, to take and report to the court an account of the profits which the said defendants have received, or which have arisen or accrued to them from the infringement of the patented invention, by unlawfully making, using or vending the same as alleged in the bill, and to ascertain and report the damages, if any, in addition to the profits, which the complainants have sustained thereby since the twenty-second day of May, A. D. 1883, as to letters patent No. 278,294, and

since the sixteenth day of September, A. D. 1884, as to letters patent 305,118.

It is further ordered, adjudged and decreed, that a perpetual injunction be issued against the defendants according to the prayer of the bill.

And it is further ordered, adjudged and decreed, that the complainants recover of the defendants their costs of suit.

By the court.

BENJ. H. BRADLEE,
Deputy Clerk.

Copy from Docket of Circuit Court.

(Filed April 18, 1894.)

OTTO THUM *et al.*
v.
JOHN A. ANDREWS *et al.* } 2893.

Docket entries from Feb. 7, 1893, to Feb. 6, 1894, inclusive.

Oct. T., 1892. Feb. 7. Carpenter, J. Decree for injunction & reference to master entered—decree in files.
" 8. Injunction issued—return served.
May 6. Motions to reopen and dissolve injunction and copy letters patent No. 125,326 filed.
" 13. Carpenter, J. Final decree for complainants by agreement for $2,500 as damages, profits and costs. Decree and rescript in files.
May T., 1893. " 15. Acknowledgment of satisfaction of decree filed.
June 23. Heard on motions to reopen case and to dissolve injunction before Carpenter, J., and motions denied.
Oct. T., 1893. Nov. 17. Prayer for appeal and assignment of errors filed.
Feb. 5. Carpenter, J. Rescript filed—appeal allowed.
" " Bond filed and approved. Citation issued returnable Mar. 1, 1894.
" 6. Protest of defendants filed.

A true copy of the docket entries in the above-entitled cause from Feb. 7, 1893, to and including Feb. 6, 1894.

[SEAL.]

Attest: BENJ. H. BRADLEE,
Deputy Clerk.

United States Circuit Court of Appeals for the First Circuit, October Term, 1893.

JOHN A. ANDREWS *et al.*
v.
OTTO THUM *et al.*
No. 89.

Before Putnam and Webb, JJ.

Opinion of the Court, June 23, 1894.

PUTNAM, *J.*:

This is a motion to dismiss an appeal in a patent cause. The bill was brought against the vendors of the alleged infringing article. With the consent of the nominal defendants, the manufacturers assumed and carried on the defence in the circuit court, so that the ultimate result when reached will constitute *res adjudicata* as against them. After the manufacturers had so far embarked in the defence as to involve essentially their own interests, the permission to conduct it became irrevocable, unless they failed to conduct it properly, or to give indemnity or comply with other reasonable terms, if asked under proper circumstances. There is no suggestion in the record calling for the consideration or application of any of these qualifications.

An interlocutory order for an injunction and an account was, after a trial on bill, answer and proofs, entered Feb. 7, 1893. Thereupon the manufacturers, who were defending, filed May 6, 1893, a motion to reopen the case and dissolve the injunction, for reasons touching the merits. Meanwhile, without consulting the manufacturers, the nominal parties caused to be entered May 13, 1893, a final decree as follows:

"Inasmuch as it appears that the parties have settled the money payments ordered by the interlocutory decree, it is hereby ordered, adjudged and decreed that reference to a master be waived and that defendants be ordered to pay to the complainants the sum of $2,500 as damages and profits to be recovered by the complainants of the defendants herein and as costs of suit."

On the twenty-third day of June, 1893, the court heard on its merits the motion filed May 6, 1893, and denied it. This left the injunction in full force, and, so far as concerns it, a judgment which binds the manufacturers unless reopened on appeal or otherwise.

The manufacturers took this appeal in the names of the nominal defendants within six months from June 23, but not within that period from May 13, 1893.

The objection based on the time within which the citation was made returnable is met in every phase by Seagrist *v.* Crabtree, 127 U. S., 773.

The motion filed May 6, 1893, and heard after the entry of the decree of May 13, 1893, must be regarded as in effect the same as a petition for a rehearing filed after judgment under our rule 29. It was heard on its merits without objection, and can have no other possible effect. It was entirely lacking form; but in the Federal courts, when substance is preserved, defect of form is easily waived, as was done in this case. Holding the proceeding to have operation under rule 29, the appeal was seasonably taken. Aspen Mining and Smelting Company *v.* Billings, 150 U. S., 31; Voorhees *v.* John T. Noye Manufacturing Company, 151 U. S., 135.

That the appellees have mistaken the application of the rules of this court touching the time of filing the record, has been settled since Owings *v.* Tiernan, 10 Pet., 24.

The right of the manufacturers to take this appeal without the special consent of the nominal defendants is denied. That under the circumstances justice requires that they should be allowed to take it cannot be disputed. We need not determine whether the right to take an appeal is ordinarily implied in a general authority to defend under the circumstances of this case; because here the formal contract between the nominal defendants and the manufacturers obliged the latter to carry on the defence to "final judgment," and after the manufacturers became involved in the litigation, and needed to protect themselves, as well as the nominal defendants, their rights were necessarily concurrent with their liability. "Final judgment" in this agreement evidently means a determination by the ultimate tribunal; otherwise the manufacturers might unjustly have left their customers to their own fate in an appellate tribunal, which would be contrary to the spirit of the contract.

The other points made on the motion to dismiss, so far as they have any pertinency, are appropriate only to the hearing on the merits.

Motion to dismiss denied.

United States Circuit Court of Appeals for the First Circuit.

JOHN A. ANDREWS *et al.*
v.
OTTO THUM *et al.*
No. 89.

Order of Court.

June 23, 1894.

This cause came on to be heard April 18, 1894, on the motion to dismiss the appeal filed by the appellees March 20, 1894, and was argued by counsel.

On consideration whereof it is now, to wit, June 23, 1894, ordered as follows: Motion to dismiss appeal denied.

By the court:

JOHN G. STETSON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit, October Term, 1894.

JOHN A. ANDREWS *et al.*, Defendants, Appellants,
v.
OTTO THUM *et al.*, Complainants, Appellees.
No. 89.

Appeal from the circuit court for the district of Massachusetts.

Before Colt, Webb, and Aldrich, JJ.

Opinion of the Court.

February 21, 1895.

COLT, *J.*:

Since the decision rendered June 23, 1894, denying the motion to dismiss this appeal, the objections to the validity of the appeal now urged by the appellees are not open, and the case comes before the court at this time for decision on its merits.

The Peck patent, No. 125,326, which is printed in the record, cannot be considered by the court, for the reason that it was not set up in the answer and was first introduced as evidence in the court below in support of a motion for rehearing and to reopen the case, which was denied.

This suit was brought for the infringement of letters patent No. 278,294, dated May 22, 1883, and of letters patent No. 305,118, dated Sept. 16, 1884, both issued to Otto Thum.

These patents relate to fly-paper.

Patent No. 305,118 is for an improved method of applying the adhesive compound to the paper by means of rollers, and for the improved article produced thereby. The suit is not pressed as to the first and second claims which relate to the improved method but only as to the third claim for the product. This claim reads as follows:

"3. As a new article of manufacture, the fly-paper with adhesive faces placed together, so as to be packed without folding, and adapted to be separated when ready for use, substantially as described."

We are unable to discover anything patentable in this claim considered by itself or apart from the mechanical means set forth in the patent by which the article is produced. There certainly can be no invention in placing two sheets of fly-paper together with their sticky surfaces face to face, although in this form they may be packed without folding, and may be readily separated for use. The invention, if any, in this patent must reside in the mechanical means by which this was effected, and it is not shown that the defendants have made use of these means.

Patent No. 278,294 is for an improvement in fly-paper and contains a single claim, as follows:

"A sheet of fly-paper partially covered with a sticky composition, the latter being surrounded with a band or margin of less but still slightly adhesive material."

The specification says:

"My invention relates to an improved method of making and packing sticky fly-paper; and its object is to prevent the running and spreading of the adhesive coating under any circumstances, so that large quantities of the paper may be packed and transported without deterioration and kept on hand.

The invention consists in surrounding the adhesive coating with material of such a nature that it will adhere slightly to an adjoining sheet, but will separate readily for use, and when the sheets are in contact will prevent the adhesive coating from spreading."

The only new result which seems to have been accomplished by this method of making fly-paper is the production of an article which can be packed in large quantities and kept on hand without deterioration.

It is undoubtedly true that this method produces a very merchantable article, but the question arises whether its adoption called

for the exercise of invention in view of what was old and well known. It is not contended that there was anything new in the adhesive substances themselves, or in the mechanical means by which they are applied, but the simple question is whether there was any invention in coating the body of a sheet of paper with an adhesive composition and surrounding it with a border of less adhesive material.

If the patentee had been the first to apply two compositions, one of which was more adhesive than the other, or one of which was adhesive and the other not, to a single sheet of paper and this accomplished a new and useful result, it might perhaps be said that it involved invention in the eye of the patent law. But this can hardly be true if we find that substantially all this was old.

In the preparation of medicinal plasters it was common to spread upon a sheet of leather or paper a medicated composition, either slightly, or not at all, adhesive, and to surround it with a margin of more adhesive substance intended to secure the plaster to the surface on which it was to be applied. Thus the use of two substances, the one slightly adhesive, and the other readily adhesive, upon the same sheet of leather or paper was common long before the date of the patent. To apply this old method in the preparation of fly-paper only called for the transposition of these materials. All the patentee did was to reverse the order and put the less adhesive material on the outside or margin, and the more adhesive in the middle of the sheet. Such a re-arrangement required no invention, but would suggest itself to any one skilled in the art.

It is not sufficient that the patentee may have produced a better and more merchantable article, but there must have been something novel in the means which were employed in its production.

What constitutes patentability in this class of cases is clearly expressed by the Supreme Court in the recent case of Knapp *vs.* Morss, 150 U. S., 221. On page 228 the court says:

"Tested by these authorities the validity of the patent in question must be ascertained, not from a consideration of the purposes sought to be accomplished, but of the means pointed out for the attainment thereof, and if such means, adapted to effect the desired results, do not involve invention, they can derive no aid or support from the end which was sought to be secured. All that Hall did was to adapt the application of old devices to a new use, and this involved hardly more than mechanical skill, as was ruled in Aron *vs.* Manhattan Railway Co., 132 U. S. 85, where it was said: 'The

same device employed by him (the patentee) existed in earlier patents; all that he did was to adapt them to the special purpose to which he contemplated their application, by making modifications which did not require invention, but only the exercise of ordinary mechanical skill; and his right to a patent must rest upon the novelty of the means he contrived to carry his idea into practical application.'"

For these reasons, patent No. 278,294 and the third claim of patent No. 305,118 must be held to be void for want of patentable novelty.

The decree of the circuit court is reversed, and the cause remanded with directions to dismiss the bill with costs.

United States Circuit Court of Appeals for the First Circuit.

JOHN A. ANDREWS *et al.*
v.
OTTO THUM *et al.*
No. 89.

Decree.

February 21, 1895.

This cause came on to be heard October 16, 1894, upon the transcript of the record of the circuit court of the United States for the district of Massachusetts, filed March 9, 1894, and was argued by counsel.

On consideration whereof it is now, to wit, February 21, 1895, ordered, adjudged, and decreed by this court as follows: The decree of the circuit court is reversed and the cause remanded, with directions to dismiss the bill with costs.

By the court:

JOHN G. STETSON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit.

JOHN A. ANDREWS *et al.*, Defendants, Appellants,
v.
O. & W. THUM, Complainants, Appellees.

On appeal from the circuit court of the United States for the District of Massachusetts.

Petition for Rehearing.

(Filed April 5, 1895.)

The petition of Otto and William Thum, complainants, appellees, in the above-entitled cause, respectfully showeth that the said cause was decided in this court upon the twenty-first day of February, 1895, and that the decree of the circuit court was reversed, and the cause remanded with directions to dismiss the bill with costs. And your petitioners pray that they may have a rehearing and a re-argument of the said cause, and that the mandate therein may be stayed until the decision of the court has been thus obtained, and until such further time as to the court shall seem just, for the following reasons:

The court erred in its decision upon the following matters of law, such errors being apparent upon the face of the record, to wit:

1. In holding that the patentee was not the first to apply two compositions, one of which was more adhesive than the other, to a single sheet of paper, to accomplish a new and useful result, there being no competent evidence before the court to the contrary.

2. In holding that the new article of manufacture set out in the claim of letters patent No. 305,118, to wit:

"A sheet of fly-paper partially covered with a sticky composition, the latter being surrounded with a band or margin of less, but still slightly adhesive material,"

did not involve invention over the construction shown in certain medical plasters, not in evidence.

3. In holding that the device of patentee would readily suggest itself to one skilled in the art, although it did not, so far as the record discloses, in fact so suggest itself to others in an art more than fifty years old in this country, and more than two thousand years old in the world.

4. Because the publication set up in the answer was not offered in evidence, and there is no competent proof before the court of the construction defined therein, even assuming the construction to be identical with that of the patentee.

5. The complainant has had no opportunity to show by necessary expert evidence the differences of construction and of function between the devices described in the publication and the device of the patentee.

6. The decree appealed from was a decree by consent, and is conclusive of all matters within its scope, and not appealable, and the court is without jurisdiction to inquire into the matters within the scope of such decree.

7. The court erred in its application of the doctrine set out in the case of Knapp *v.* Morss, 150 U. S., 221, in view of the explanation of that case by the Supreme Court of the United States, in The National Cash Register Company *v.* The Boston Cash Indicator and Recorder Company, 70 O. G., 1796, published March 26, 1895, since the decision of this case.

And complainants further show that their counsel endeavored to obtain from the clerk of this honorable court a copy of the rules of court, but was unable to do so at the time, because the clerk had on hand no printed copies of such rules, and that he was therefore not advised in the premises that any limitation on argument of causes was set by general rule of the court; and that upon the argument, after having spoken for an hour and a quarter, at twenty minutes past one o'clock in the afternoon, his honor the presiding judge, informed counsel that the case must be finished that day; that the court would adjourn at two o'clock; that opposing counsel would have a half hour of the remaining time; that, as the court must look into the record for itself on questions of fact, they would derive more help from counsel's argument if he would direct his attention to the question of patentability; that counsel had thus ten minutes only in which to refer to the question of patentability, upon which the decision of the court in this case has turned.

OTTO AND WILLIAM THUM,
By T. J. JOHNSTON, *Solicitor.*

Counsel's Certificate.

I, Thomas J. Johnston, counsel for appellees in the above-entitled cause, do hereby certify that in my opinion the grounds of the

above application for rehearing and re-argument are well taken, and that the matter should receive further judicial consideration; and, further, that the above petition is not interposed for delay, but to the end that the court may fully consider matters which in my opinion were not treated or fully brought to its attention at the time of the argument of the cause.

THOMAS J. JOHNSTON, *Of Counsel.*

United States Circuit Court of Appeals for the First Circuit.

JOHN A. ANDREWS *et al.*, Defendants, Appellants,
v.
O. & W. THUM, Complainants, Appellees. } No. 89.

Petition for Leave to File Affidavit on Petition for Rehearing.

O. & W. Thum, the complainants and appellees in the above-entitled cause, by their solicitor, respectfully represent that they have filed under the rule their petition for rehearing herein, and request leave of this honorable court to file the accompanying affidavit of Ellis Spear, expert in patent matters, copies of which have been deposited with the clerk of court for the consideration of the court upon the said petition.

O. & W. THUM,
By T. J. JOHNSTON, *Solicitor.*

United States Circuit Court of Appeals for the First Circuit, October Term, 1894.

JOHN A. ANDREWS *et al.*, Defendants, Appellants,
v.
OTTO THUM *et al.*, Complainants, *Appellants.* } No. 89.

Ellis Spear of Washington, in the District of Columbia, being sworn, deposes and says: that for nearly thirteen years he was in the U. S. Patent Office, at first in the examining corps, and subsequently as Commissioner of Patents; and that for the last seventeen years he has been employed as an expert in matters relating to patents for inventions; that he is familiar with the United States letters patent of Otto Thum, Nos. 278,294 and 305,118, and with the article made in accordance with said patent.

The difficulty which, prior to these inventions, existed in the

manufacture and sale of sticky fly-paper was this: that the adhesive material which must be of a very soft consistency for the purpose of catching insects, if exposed to air, hardens and becomes absolutely useless for the purpose for which it is designed.

The sticky material could not be covered by any ordinary covering to prevent exposure to the atmosphere, since such covering would adhere to the sticky material, and remove it from the paper on which it had been placed. Unless covered, however, the sticky surfaced sheets could not be kept on hand for use; could not be manufactured on a commercial scale, and could not be transported. This difficulty was remedied by the device specified in the third claim of letters patent, No. 305,118. The remedy proved perfectly efficacious; one sheet being made to cover and to be covered by the other; and in separating the sheets thus packed face to face, one-half the adhesive material remained smeared on each sheet.

One other difficulty was found; and that was this: that the soft adhesive material would, under any considerable pressure in the package, ooze out from between the sheets, and smear the margins and sometimes the backs of the sheets. For handling, the margin of the sheets must be unsmeared and the oozing of the material over the margins or upon the backs of the sheets renders them worthless, since they cannot be handled nor laid down, without adhering to the fingers, or the surface on which they are laid.

The device for obviating this difficulty is specified in the claim in letters patent No. 278,294. The band or margin mentioned in the claim is a dam (formed upon the unsmeared margin or rather within this margin,) which is of less adhesive and harder material and therefore obstructs the outward flow of the softer interior; and when the sheets, thus smeared and margined, are laid face to face, the margins being slightly adhesive, adhere to each other, and so completely include and hold in the soft material. The greater the pressure on the sheets so doubled, the more closely the dams or borders adhere, and the more securely the soft interior is held.

Other means have been tried for this purpose of holding in the soft adhesive interior, but none so far as deponent is aware after diligent inquiry, so simple, cheap and effectual as this.

For example, clamps have been used on a bundle of sheets of sticky fly-paper arranged to firmly clamp together the edges of the sheets, and thus to retain the soft interior, but this has been found clumsy and could be practically applied only to large bundles, while the border or dam of the patent No. 278,294, can be cheaply

placed on each sheet; and therefore each pair of sheets, thus provided with a retaining border, is complete in itself, and the dam acts whether the pair is in a pile or single by itself, and the interior is retained until the sheets are pulled apart for use. This retaining border is necessary in ordinary temperatures; at summer temperatures the sheets could not be packed an hour without overflow of the sticky substance.

As compared with the old medical plasters, I find the fly-paper of the aforesaid patent, to show these differences: The interior or medical preparation is not necessarily adhesive; the border is of non-medical but adhesive material, and for the sole purpose of causing the plaster to adhere to the body. There is no dam, and no interior soft material liable to run, and therefore no need of a dam. Different conditions, as heretofore explained, exist in the sticky fly-paper. The border in the fly-paper is of a material calculated to retain the soft interior and at the same time to adhere to the opposing border of another sheet. It does not appear that the interior medicated substance of the plaster would do this, even if the materials of the plaster were reversed.

I do not find in the plaster, the elements of the fly-paper of the patents; and further deponent saith not.

ELLIS SPEAR.

Sworn to and subscribed before me, this twenty-eighth day of March, A. D. 1895.

[SEAL.] HENRY E. COOPER,
Notary Public.

United States Circuit Court of Appeals for the First Circuit,
October Term, 1894.

JOHN A. ANDREWS *et al.*, Appellants,
v.
OTTO THUM *et al.*, Appellees. } No. 89.

Order of Court.

May 13, 1895.

So much of petition as relates to leave to file affidavits in this court is denied. Roethe *v.* Simon, 91 U. S., 149.

Rehearing granted upon present record as to matters set forth in

paragraphs 1 to 7, inclusive, on pages 2 and 3 of printed petition for rehearing.

Petitioners' brief to be filed on or before May 25; brief in answer thereto to be filed on or before June 3; brief in reply to be filed on or before June 8, 1895, and arguments to be heard Tuesday, June 11, at 10 a. m.

By the court:

JOHN G. STETSON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit, October Term, 1894.

JOHN A. ANDREWS *et al.* v. OTTO THUM *et al.* } No. 89.

Before Colt, Webb, and Aldrich, JJ.

Opinion of the Court.

June 11, 1895.

Per curiam:

Upon rehearing we see no reason to modify the views heretofore expressed or to change the result already announced in this case.

The decree of the circuit court is reversed and the cause remanded, with directions to dismiss the bill with costs.

United States Circuit Court of Appeals for the First Circuit, October Term, 1894.

JOHN A. ANDREWS *et al.* v. OTTO THUM *et al.* } No. 89.

Final Decree upon Rehearing.

June 11, 1895.

This cause came on to be reheard June 11, 1895, under the order of court of May 13, 1895, and — argued by counsel.

On consideration whereof it is now, to wit, June 11, 1895, ordered, adjudged, and decreed by this court as follows: The decree of the

circuit court is reversed and the cause remanded, with directions to dismiss the bill with costs.

By the court:

JOHN G. STETSON, *Clerk.*

United States Circuit Court of Appeals for the First Circuit, October Term, 1894.

JOHN A. ANDREWS *et al.*, Defendants, Appellants,
v.
OTTO THUM *et al.*, Complainants, Appellees. } No. 89.

Appeal from the circuit court for the district of Massachusetts.

Before Colt, Webb, and Aldrich, JJ.

Petition on Form of Mandate.

(Left with clerk June 29, 1895, and sent to the judges sitting in this case.)

Now, after decision in the above-entitled appeal and before order for mandate, come the defendants in the above-entitled cause, John A. Andrews, William Y. Wadleigh, B. F. Bullard and William A. Dole, by their attorneys, Messrs. Fish, Richardson & Storrow, and respectfully request that the appearance of their said attorneys be entered in this court to represent and act for these defendants in respect to the matters referred to in this petition.

Your petitioners represent unto your honors that on the twenty-seventh day of July, A. D. 1891, a bill of complaint (Record, page 1) was filed in the circuit court for the district of Massachusetts, by Otto Thum and William Thum, alleging infringement by your petitioners of patent to Otto Thum, No. 278,294, dated May 22, 1893, and praying that your petitioners might be decreed to pay to the said complainants the damages and profits caused by their alleged infringement, all as more fully appears by said bill; that thereafter the answer and replication were duly filed and proofs taken on behalf of the respective parties, and the cause came on for hearing before his honor, Judge Carpenter, who on Dec. 28, 1892, rendered his decision (Record, page 199), holding that said patent was valid and had been infringed by defendants, and ordering a decree for complainants. That on the seventh day of February, A. D. 1893, a decree was entered in that cause (Record, page 186), by which it

was adjudged that the patent in suit was a good and valid patent and that your petitioners had infringed upon the rights of the said complainants under the same; and the decree further ordered, in the usual form, that your petitioners should pay to the said complainants the costs of suit and the profits and damages to be ascertained by a master of the court.

On April 10, 1893, Messrs. Fish, Richardson & Storrow entered their appearance as counsel for your petitioners (Record, page 187), the said case having been theretofore defended by John W. F. Willson and Benjamin F. B. Willson in the name of your petitioners (Record, page 197).

Thereafter, namely, on May 13, A. D. 1893 (Record, page 195), acting on the advice of their said counsel, your petitioners agreed with complainants that reference to a master, to ascertain the amount due from your petitioners to complainants under the aforesaid decree, should be waived, and that the sum of twenty-five hundred dollars ($2,500) should be recovered by the complainants as profits, damages and costs of suit, and a final decree was entered, fixing the aforesaid sum as the amount to be paid by your petitioners to complainants; and on the fifteenth day of May, A. D. 1893 (Record, page 195), your petitioners did, under the direction of the said decrees of the circuit court and for no other consideration or inducement whatever, pay over to the said Otto Thum *et al.* the sum of twenty-five hundred dollars ($2,500), which payment was made by your petitioners from their own funds, and by no other persons whatever.

An appeal was subsequently taken from this final decree by John W. F. Willson and Benjamin F. B. Willson, without the consent or approval of your petitioners (Record, pages 197, 198), the bond on appeal being furnished by said Willsons (Record, page 201). This court decided, in its opinion of June 23, 1894, that said Willsons had a right to take an appeal, and the cause was subsequently heard by this honorable court on appeal; and, after consideration, it was decided that said patent was invalid and that the decree of the circuit court should be reversed.

Your petitioners therefore submit that the decree directing your petitioners to pay profits and damages and costs to the said complainants, was an erroneous decree, as has been settled upon said appeal from said decree by this court; and that your petitioners therefore paid said sum of twenty-five hundred dollars to said com-

plainants under an erroneous decree, and are entitled to be repaid said sum.

Now, therefore, your petitioners, having been compelled to pay to the said complainants the sum of twenty-five hundred dollars ($2,500) under a decree of the circuit court, which decree has since been reversed by your honors, in which payment said Willsons had no part, humbly pray that your honors may include in the mandate to be sent down to the circuit court an order that the circuit court shall in its decree direct that restitution be made by the complainants to your petitioners through their sole attorneys, Fish, Richardson & Storrow, of the sum of twenty-five hundred dollars ($2,500), with interest, which your petitioners paid in pursuance of the order contained in the aforesaid erroneous decree of the circuit court, and for such other and further relief as may seem to your honors just and proper.

By their attorneys, FISH, RICHARDSON & STORROW.

June 28, 1895.

United States Circuit Court of Appeals for the First Circuit.

JOHN A. ANDREWS *et al.*, Defendants, Appellants,
v.
OTTO THUM *et al.*, Complainants, Appellees. } No. 89.

Appeal from the circuit court for the district of Massachusetts.

Petition on Form of Mandate.

(Left with clerk July 16, 1895, and sent to the judges sitting in this case.)

If any notice whatever is taken by this court on the petition of Fish, Richardson & Storrow, filed on June 29, 1895, except to unconditionally dismiss this petition, the undersigned desires to be heard on the matter before any positive action is taken.

JOHN M. PERKINS,
Attorney for John A. Andrews & Co., Appellants.

United States Circuit Court of Appeals for the First Circuit, October Term, 1894.

JOHN A. ANDREWS *et al.*, Defendants, Appellants,
v.
OTTO THUM *et al.*, Complainants, Appellees. } No. 89.

Appeal from the circuit court for the District of Massachusetts.

Before Colt, Webb, and Aldrich, JJ.

Petition on Form of Mandate.

(Left with the clerk July 23, 1895, and sent to the judges sitting in this case.)

Now, after decision in the above-entitled appeal and before order for mandate, come the complainants, appellees, by their solicitor, and represent unto your honors that they have read the petition on form of mandate by appellants in this court; and thereupon do respectfully represent that as to the matters and things therein contained this court has no jurisdiction to inquire into the same, for that the said decree against which defendants, nominal appellants in this court, do now attempt to bring error, was a decree by consent, and that they are therefore estopped to appeal or to take any other action in reference thereto.

And the complainants, appellees, do further respectfully represent that as to the matter on page 2, paragraph 3, of the said petition referred to, it is untrue in point of fact that the said payment of $2,500 fixed by the final decree of the court below was for no other consideration than upon the decree by that court, but that the defendants, appellants, were fully advised in the premises of every action taken by any of the parties to said suit, and that they did refuse to appeal the said suit or to be further interested therein. That thereupon the complainants, appellees, did agree to relieve them from the costs and expenses of a reference to a master to ascertain the amount of damages; that at the time of said decree the right to take an appeal from the interlocutory decree, as distinct from the final decree, had lapsed, and that defendants, appellants, would have been compelled to expose their books before the master, and would have been liable upon his report for a much larger sum than that in the said consent decree stipulated and decreed, but that to end the litigation, and upon express assurance that they would not be further troubled

thereby, the defendants paid the said $2,500 which was fixed by the final decree, and entered the decree as in full of all demands by the complainants.

And your petitioners further represent that the said defendants, nominal appellants, did, upon the 6th day of February, 1894, file by their solicitors, Fish, Richardson & Storrow, acting for them upon this petition, a paper in the words following, to wit:

Protest.

The above-named defendants, J. A. Andrews, Wm. Y. Wadleigh, E. F. Bullard and Wm. A. Dole, respectfully protest against the allowance of an appeal in the above-entitled cause, and represent that the said cause is settled, and that they do not desire, nor consent to, nor authorize an appeal.

By their solicitors, FISH, RICHARDSON & STORROW.

As doth appear upon the record upon page 198 thereof, and that by the said protest they are forever estopped and concluded from asserting that the said decree was erroneous in any particular, and are further estopped and concluded from maintaining that the said payment was without other consideration than the decree itself.

And your petitioners further represent that upon allegations contained in the petition upon form of mandate the defendants, appellants, are not entitled to affirmative relief of any kind, sort or description, but that their course was to sue for money due and received, and that therefore they have no equity.

And your petitioners further represent unto your honors, that no authority is cited by defendants, appellants, for this other petition or request: but that it is an elementary principle that money paid under a decree cannot be recovered by afterwards reversing the decree, and that so has been the rule both in England and in this country even at the time when a decree must have been executed before it could be appealed from.

O. & W. THUM,
By T. J. JOHNSTON, *Solicitor.*

July 15, 1895.

Clerk's Certificate.

United States Circuit Court of Appeals for the First Circuit.

I, John G. Stetson, clerk of the United States circuit court of appeals for the first circuit, certify that the printed pages numbered 2 to 203, inclusive, hereto prefixed, contain and are a true copy of a transcript of record of the circuit court of the United States for the district of Massachusetts filed in said circuit court of appeals and case docketed March 9, 1894, the same being the entire record upon which the cause entitled, No. 89, John A. Andrews *et al.*, defendants, appellants, *v.* Otto Thum *et al.*, complainants, appellees, was lately heard in said circuit court of appeals, October 16, 1894, and, a rehearing having been granted as to matters set forth in paragraphs 1 to 7, inclusive, of a petition for rehearing, was reheard as to said matters June 11, 1895, upon which hearing and rehearing a final decree was entered in said circuit court of appeals June 11, 1895, a copy of which decree appears on page 265 of this certified copy.

I further certify that page 204, hereto prefixed, contains and is a true copy of an order enlarging time for docketing case filed in the clerk's office of the said circuit court of appeals March 8, 1894.

I further certify that of the pages hereto prefixed pages 205 to 216, inclusive, contain and are a true copy of a motion to dismiss appeal filed March 20, 1894; pages 217 to 243, inclusive, contain and are a true copy of the record on motion to dismiss appeal, printed by direction of the appellees for use at the hearing of said motion to dismiss appeal and used at said hearing; pages 244 to 246, inclusive, contain and are a true copy of the opinion of the court announced June 23, 1894; page 247 contains and is a true copy of the order of court June 23, 1894, denying said motion to dismiss appeal; pages 248 to 251, inclusive, contain and are a true copy of the opinion of the court announced February 21, 1895; page 252 contains and is a true copy of the decree of February 21, 1895, in accordance with said opinion; pages 253 to 257, inclusive, contain and are a true copy of a petition for rehearing filed by the appellees April 5, 1895; pages 258 to 262, inclusive, contain and are a true copy of a petition for leave to file affidavit on petition for rehearing and accompanying affidavit submitted to the court April 5, 1895; page 263 contains and is a true copy of the order of court of May 14, 1895, granting a rehearing as to certain matters; page 264 contains and is a true copy of the opin-

ion of the court announced June 11, 1895, and page 265 contains and is a true copy of the final decree upon rehearing, entered June 11, 1895.

I further certify that pages 266 to 273, inclusive, contain and are true copies of petitions on form of mandate left with the clerk and sent by him to the judges sitting in this cause as follows:

Petition of Fish, Richardson & Storrow, pages 266 to 268, inclusive.

Petition of John M. Perkins, attorney for appellants, page 269.

Petition of appellees, pages 270 to 273, inclusive.

I further certify that the transcript of record and the papers, orders, and decrees hereinbefore mentioned remain on file and of record in said cause in said United States circuit court of appeals for the first circuit, and that pages 2 to 273, inclusive, containing true copies thereof, contain and are a true copy of the record and all proceedings in said cause in said United States circuit court of appeals to and including September 9, 1895.

Seal United States Circuit Court of Appeals, First Circuit.

In testimony whereof I hereunto set my hand and affix the seal of said United States circuit court of appeals for the first circuit, at Boston, in the first judicial circuit, this ninth day of September, A. D. 1895.

JOHN G. STETSON, *Clerk.*